

BARBADOS

[Unreported]

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

No. 898 of 2013

BETWEEN:

SUSAN FRAMPTON

CLAIMANT

AND

VIRGIN HOLIDAYS LTD (PART 20 CLAIMANT)

1ST DEFENDANT

PROSPECT BAY RESORTS LIMITED (PART 20 DEFENDANT)

2ND DEFENDANT

ESCAPE MANAGEMENT LIMITED UK (PART 20 DEFENDANT)

3RD DEFENDANT

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

**Dates of Hearing: 2013 May 29th,
October 29th,
December 11th,
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

[1] This was an Application filed in May 2013 by the First Defendant herein (Part 20 Claimant) seeking registration of a foreign judgment for damages

given by a London County Court delivered on the 5th day of March 2012. The Claimant therein, Susan Frampton, (who makes no appearance in these courts) claims damages arising from an accident occurring at Escape Hotel and Spa, in the parish of St. James, in this Island.

[2] The said Application is set out ‘*in extenso*’ below:

“The judgment dated the 5th day of March 2012 and made by District Judge Silverman sitting at Central London County Court, Civil Justice Centre, 13-14 Park Crescent, London, W1N 1HT that:

- (1) There be judgment for the Part 20 Claimant in the Part 20 Claim.
- (2) The Part 20 Defendant do pay to the Part 20 Claimant the sums of £45,000 (being the sum payable by the Part 20 Claimant to the Claimant) and (being the £32,000 total costs to the Part 20 Defendant of defending the claim and bringing the Part 20 Claim); such sums to be payable by 11th April 2012.
- (3) The Part 20 Claimant has permission to serve this Order on the Part 20 Defendant by post at the address given by the Part 20 Defendant in its notice of change of solicitor dated 22nd January 2012 being c/o George Walton Payne, Suite 205-207, Dowell House, Corner Roebuck, Palmetto Street, Bridgetown, Barbados outside of the jurisdiction)”.

[3] As with the earlier application (#897 of 2013), both Application and Affidavit in Support state, that to date the judgment remains unsatisfied.

[4] Two very significant things are apparent on a reading of this Order of March 2012: firstly, that the Claimant and the 1st Defendant settled their claim separately by a Consent Order dated February 2012 to which the 2nd Defendant was not a party; and secondly, that the 2nd Defendant/Part 20 Defendant Prospect Bay Resorts Limited only (no mention being made of

Escape Management Ltd UK) did not attend the hearing of March 6th 2012, District Judge Silverman hearing counsel for the Part 20 Claimant/1st Defendant and thereafter entering judgment in its favour.

[5] This Application differs somewhat from #897 of 2013, the first such difference being a 3rd Defendant, Escape Management Limited UK. The 2nd Defendant (Part 20 Defendant UK CPR) was also more active in this proceeding. The Affidavits reveal that Prospect Bay Resorts Ltd 2nd Defendant (Part 20 Defendant) was served with the proceedings filed in the UK, and through its solicitors filed an Acknowledgement of Service indicating its intention to contest jurisdiction. It, subsequently, filed a Defence.

[6] A Notice indicating a change of solicitors was filed in the UK requesting that the 2nd Defendant should be served at George Walton Payne and Co. in Barbados. Thereafter, it appears that there was no participation by the 2nd Defendant/Part 20 Defendant in this matter.

[7] The following further documents were filed:

1. The Affidavit of Chester Sue dated May 29th 2013;
2. Amended Notice of Application filed October 28th 2013;
3. Affidavit of Gary James Tweddle filed December 4th 2013;
4. Affidavit of attorney at law Chester Sue of December 9th 2013;
5. Affidavit of attorney at law Chester Sue of April 22nd 2014;
6. Affidavit of Gary James Tweddle of May 5th 2014.

The Amended Notice of Application

[8] As with #897 of 2013, this document was filed after this Court pointed out to the Applicant that the Application was out of time, as **section 3(1)** of the **Foreign and Commonwealth Judgments (Reciprocal Enforcement) Act Cap. 201**, requires a judgment creditor to apply to the High Court within 12 months of the date of judgment to have the judgment registered. Consequently, the amendment requested that “the time for making this application be extended beyond 12 months from the date of the judgment sought to be registered”.

[9] As with the earlier claim, this Court observes that the Affidavit of Gary Tweddle of May 5th 2014 speaks to the reason for the late application without speaking to the 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**.

[10] This Court again took the view that there appeared to be no prejudice caused to the judgment debtor by the extension and allowed the application to proceed.

Issues Arising

[11] The issue herein mirrors that in #897 of 2013, being whether this Court should exercise its discretion to permit the registration of the Judgment

obtained by the 1st Defendant/ Part 20 Claimant in the United Kingdom against the 2nd Defendant/Part 20 Defendant.

The Law

[12] As mentioned above, this matter in some respects unfolded differently from #897 of 2013, leading this Court to a slightly different approach in its review of the relevant law.

[13] As stated in the earlier case, this matter is impacted by three major pieces of legislation, being, the **Foreign and Commonwealth Judgment (Reciprocal Enforcement of Judgments) Act Cap. 201** (hereinafter referred to as the **FCJA**), the **Reciprocal Enforcement of Judgments (Part 72) of the CPR**; and the **Evidence Act Cap. 121**.

[14] **Section 3(2)** of the **FCJA** provides that:

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

- (a) the original court acted without jurisdiction; or
- (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; or...”.

[15] The issue of the jurisdiction of the UK court arises on the face of the documentation submitted to this Court in the Affidavits in Support. It is

clear, in contrast to the circumstances in #897 of 2013, that the 2nd Defendant/Part 20 Defendant, Prospect Bay Resorts played a part in the proceedings in the UK. At paragraphs 6 to 11 of his Affidavit of December 4th 2013, Solicitor Gary James Tweddle states as follows:

“6 Following service of the Part 20 proceedings, the Part 20 Defendant then instructed solicitors in the UK (Macfarlanes in London) to act for them. It was they who filed an Acknowledgment of Service on the 20 October 2009 indicating that their client intended to contest jurisdiction (see **Exhibit GT4**). Although the Acknowledgment of Service indicated that the Part 20 Defendant would contest jurisdiction, they did not do so but rather filed a Defence dated the 17 November 2009 (**Exhibit GT5**). The Part 20 Defendant thereafter played an active part in these proceedings.

7. The three parties complied with various Directions set by the Court. A trial in the CPR Part 7 and Part 20 claims was listed for the 5 & 6 March 2012 (see **Exhibit GT6**). By this time, the matter had been transferred to Central London County Court.

8. On or around the 22 January 2012 the Part 20 Defendant’s solicitors filed and served a Notice of Change of Solicitor (see **Exhibit GT7**). The Notice clearly stated:

Address to which documents about this claim should be sent

Prospect Bay Resorts Limited

C/o George Walton Payne

Suite 205-207

Dowell House

Corner Roebuck

Palmetto Street

Bridgetown, Barbados

9. I thereafter sent emails and letters to George Walton Payne concerning the claims and the forthcoming trial. See my letter of the 27 January 2012

(**Exhibit GT8**). This referred to the trial on the 5 and 6 March 2012. I attach at **Exhibit GT9** an email from Dale D Marshall from George Walton Payne of the 27 January 2012.

10. The Part 20 Defendant did not play any further part in the proceedings brought by Mrs. Susan Frampton or the Part 20 claim brought against them by Virgin. Without the assistance (in terms of evidence, experts, and witnesses) of Prospect Bay, it was not possible for the Defendant to defend the claim. Virgin hence proceeded to settle the claim brought against them by Mrs Susan Frampton for the sum of £45,000 to include damages and Claimant's costs.
11. The Part 20 claim was technically still 'live'. No agreement had been reached between the Part 20 Claimant (Virgin) and the Part 20 Defendant (Prospect Bay). The Part 20 Claimant (Virgin) hence attended Central London County Court on the morning of the 5 March 2012. A copy of a letter sent to the Court in this regard is found at **Exhibit GT10**".

"The Part 20 Defendant did not play any further part in the proceedings brought against them by Virgin. Without the assistance (in terms of evidence, experts, and witnesses) of Prospect Bay, it was not possible for the Defendant to defend the claim. Virgin hence proceeded to settle the claim brought against them by Mrs. Susan Frampton for the sum of £45,000 to include damages and Claimant's costs."

[16] As mentioned above, the 2nd Defendant/Part 20 Defendant had filed an Acknowledgment of Service to the Claim in the UK indicating its intention to challenge the Court's jurisdiction and had subsequently filed a Defence to the claim, but this Defence did not 'make good' on the intent expressed in the Acknowledgment of Service.

[17] The circumstances in which judgment was obtained against the 2nd Defendant/Part 20 Defendant Prospect are curious and indicate no notice to

or involvement of the Part 20 Defendant when judgment was obtained, and curiously, involved correspondence in which District Judge Silverman was advised by letter that the Part 20 Defendant was unrepresented and would not be attending the hearing (see Exhibit GT10 to Affidavit of Gary Tweddle filed December 4th 2013).

[18] This Court finds that the Part 20 Defendant (although its conduct was at times contradictory and confusing) did submit to the jurisdiction of the UK Courts: see **Quinn v Pres-T-Con Limited (suprs); Nebraska Daries Inc v Tropical Trading (unreported decision of the High Court of Barbados) No. 1677 of 1993); S. A. Consortium General Textiles v Sun and Sand Agencies Limited [1978] Q. B. 279; Sirdah Gurdyal Singh v Rajah of Faridkote [1894] AC 670; Maycock v International Sea Food Limited No. 355 of 1982; Reid v Reid [2008] CCJ 8; Humphrey and Murphy v Jolly Roger Cruises Incorporated No. 61 of 1998; Dice, Morris and Collins “In the Conflict of Laws” 14th ed. VOL. 1.**

[19] Nonetheless, this Court is not minded to register the subject Order for the following reasons:

1. The failure of the submitted documents to satisfy this Court that the Cardiff County Court/Central London County Court is a ‘superior court in the United Kingdom’ within the meaning of **section 3(1) of the**

**Foreign and Commonwealth Judgments (Reciprocal Enforcement)
Act, Cap. 201.**

2. The irregularities (*inter alia*, amendments, deletions etc.) evident on the face of the documents/orders exhibited which raise issues as to its authenticity. In **Hearn v Hearn [1953] 1 All ER 797**, it was held by the Court that when asked to provide copies of orders or judgments of the court, they must be properly authenticated copies bearing the seal or stamp of the magistrate or justice or otherwise be properly certified so as to clearly show their source and authenticity.

Disposal

[20] The subject application for registration is therefore denied.

MARGARET A. REIFER
Judge of the High Court