

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

No: CV 644 of 2018

BETWEEN

COLONIAL SURETY COMPANY

Claimant

AND

**BERT L. BUCKLER
CARLA T. BUCKLER**

**First Defendant
Second Defendant**

Before: The Honourable Mr. Justice Barry L. Carrington, Judge of the High Court.

Date of Hearing: March 2, 2020.

Date of Decision: June 26, 2020.

Appearances:

Ms. Paula S. Jemmott for the Claimant.

Mr. Denis H.L. Chandler, Mr. Amilcar Branche and Ms. Sherise M. King for Defendants.

DECISION

INTRODUCTION

- [1] The issues to be resolved in this matter lie in a very narrow compass and can be resolved via the mechanism of statutory interpretation. They require the court to decide if a judgment given in a court in New Jersey, U.S.A. can be registered under local law. The importance to local jurisprudence cannot be understated as, unlike other jurisdictions in this region, statutory provision is made for the registration of foreign and commonwealth judgments in Barbados.

BACKGROUND

- [2] By way of an Application Without Notice filed on May 16, 2018, the Claimant through its local counsel Ms. Paula Jemmott, applied (1) to register in Barbados, a judgment of a court in New Jersey, U.S.A., a foreign court; (2) for an injunction to restrain the sale or disposal of a property situate in Barbados owned by the defendants, and, (3) for a Provisional Charging Order to be placed over the said property.
- [3] The Application was heard on October 10, 2018 and the court granted interim orders, *inter alia*, as follows:

- “1. That the Claimant be and is hereby granted leave to register in the High Court of Justice of Barbados, the Order of the Supreme Court of New Jersey, Morris County, Morristown, New Jersey 07962-2075, U.S.A. obtained therein on the November 22, 2013, against the above-named Defendants pursuant to section 9(1) of the **Foreign and Commonwealth Judgments (Reciprocal Enforcement) Act, Cap. 201** of the Laws of Barbados (**Reciprocal Enforcement Act**) and in accordance with Rule 72.2(1) and 72.4(1) of the **Supreme Court (Civil Procedure) Rules, 2008 (CPR 2008)**.
2. An injunction prohibiting the sale or disposal of the property of the Defendants situate at Unit 302 Golden View Condominium Apartment, aforesaid, be granted forthwith until a final charging order is obtained over the said property at Unit 302 Golden View Condominium Apartment, aforesaid, pursuant to **Rule 17.1(1)(a); 17.1(1)(b)(i); 17.3(1) and 17.4 of the CPR 2008**.
3. The Defendants may apply, within 28 days of the service of this Order, the Application and Affidavits...on them to set aside the registration of the Judgment obtained on the November 22, 2013, of the judgment made herein.”

[4] The Order and supporting documents were served on the Defendants via substituted service on June 20, 2019 in New Jersey, U.S.A. pursuant to an Order of the court entered on May 29, 2019. The time by which the Second Defendant (the First Defendant having died) was permitted to make an application to have the registration of the judgment set aside, was extended to November 29, 2019 by Order of the court, made on October 15, 2019.

[5] Counsel for the Second Defendant Mr. Dennis Chandler, by Notice of Application filed on November 29, 2019 along with an accompanying Affidavit, sought an Order as follows:

- (a) to set aside the purported registration of the foreign judgment pursuant to section 11 of the **Reciprocal Enforcement Act** and **Part 72.2 of the CPR 2008**;
- (b) the discharge of the provisional charging order on the property owned and registered in the names of the Defendants, situate at Unit 302 Golden View Condominium Apartment; and
- (c) the lifting and rescinding of the injunction prohibiting the sale of the property of the Defendants situated at Unit 302 Golden View Condominium Apartment.

made pursuant to the Order of the Court on October 10, 2018 and entered on November 2, 2018.

[6] The grounds of the Application can be summarized as follows:

- (a) that the Order of the Supreme Court of New Jersey, Morris County, Morristown, New Jersey 07962-2075, U.S.A. made on the 22nd day of November 2013 against the Defendants is incapable of registration in the High Court of Barbados pursuant to **section 9(1) of the Reciprocal Enforcement Act** because it is not a foreign judgment to which Part II of Act applies;
- (b) that the courts which can have their judgments registered in Barbados have been specified and are the courts of Grenada and St. Vincent, British Guiana (Guyana), Trinidad, Leeward Islands, St.

Lucia, Jamaica, Bahamas, Bermuda, Nigeria, New South Wales and the Federation of Nigeria;

- (c) the Order of the Supreme Court of New Jersey is not a judgment of a superior court of a foreign country qualified to be registered in Barbados; and
- (d) there are no bilateral treaties or multilateral conventions other than maintenance orders in force between the United States and Barbados with regards to reciprocal recognition and enforcement of judgments.

SUBMISSIONS

[7] Mr. Chandler for the Defendants indicated that the Order made by the learned Judge stated that it was made pursuant to **section 9(1)** of the **Reciprocal Enforcement Act** and **Rule 72.2(1) of the CPR**. Counsel argued that for an Order to be properly made by the court to register a judgment of a foreign court, that foreign court must be a court in a country/region, specified by Order of the Governor General, that accords reciprocal treatment to Barbadian judgments. He contended that the crux of the matter is the registration of the foreign judgment under the **Reciprocal Enforcement Act** and if there is no authority to register the judgment, then the consequential orders flowing from the registration must be set aside.

[8] Counsel identified the list of countries/regions specified by order of the Governor General for which judgments of their superior courts can be registered in Barbados and the U.S.A. is not listed. Mr. Chandler argued that

in the absence of legislative provisions in Barbados for registering the New Jersey judgment, then the common law principles would apply. He cited in support, the Bermudian case of **Muhl (Superintendent of Insurance of the State of New York as Liquidator of Nassau Insurance Co. (in liquidation)) v. Andra Insurance Co. Ltd.** [1999] 1 LRC (Andra Insurance Co. Ltd.). Counsel reinforced the point that the common law position is applicable to enforcing foreign judgments in Barbados from countries that do not qualify to be registered under the Reciprocal Enforcement Act.

[9] Counsel strongly urged the court to accept that the order made by the learned judge ought to be set aside pursuant to **section 11(1)(a)(i) of the Reciprocal Enforcement Act.**

[10] Ms. Jemmott, counsel for the Claimant submitted that the Defendants are labouring under a misunderstanding of registration of judgments versus enforcement of judgments. She referred to the overriding objective of the **CPR 2008** as dealing with cases justly and the saving of expense as one of the criteria for so dealing with cases. Counsel indicated that her application was for registration of a foreign judgment as well as an injunction to restrain the sale or disposal of the asset along with a provisional charging order, which was refused by the learned trial judge.

- [11] Counsel acknowledged that the judgment was registered but contended that it did not amount to an enforcement. Counsel argued that **section 9** mandates that an application must be made to register the foreign judgment and after that, the court will have to hear the matter vis a vis the other orders that are sought. Counsel advanced the view that section 8 refers to countries that can have reciprocal enforcement of their judgments and not simply registration of judgments.
- [12] Counsel contended that the Order made by the learned trial judge ought not to be set aside because it was properly made pursuant to **section 9** of the **Reciprocal Enforcement Act** and **rule 72 of the CPR**. Counsel also referred to **section 33 of the Supreme Court of Judicature Act, Cap. 117A (Cap. 117A)** and said that before an order can be become enforceable it has to be registered and the Claimant's judgment was registered.
- [13] Ms. Jemmott further submitted that there is a conflict between **sections 8 and 17** of the **Reciprocal Enforcement Act**, and argued that it is an incorrect interpretation of the Act to say that **section 8** applies only to those judgments certified by order of the Governor General.
- [14] In response to Ms. Jemmott's submissions, Counsel Mr. Chandler contended that registration of a foreign judgment must meet the requirements set out at **section 8(1)(a)** in order for that judgment to be subject to **Part II of the**

Reciprocal Enforcement Act. Counsel added that **section 13** mandates that there must be registration under the Act before enforcement can be sought. Finally, Counsel referred to **page 145, note 14(3)** of **The Caribbean Civil Court Practice** and argued that a court cannot grant interim remedies without an existing cause of action and if the registration of the judgment is set aside, all ancillary remedies made pursuant to that registration would be of no effect.

THE ISSUES

[15] The following issues are to be determined in this matter:

- (1) Whether the registration of the judgment, issued by the Supreme Court of New Jersey, Morris County, Morristown, New Jersey, U.S.A. obtained on November 22, 2013 and registered in Barbados on October 10, 2018 pursuant to **section 9(1)** of the **Reciprocal Enforcement Act**, should be set aside; and
- (2) If the answer to (1) is in the affirmative, whether the consequential orders made by the purported registration of the judgment are of no effect.

THE LAW

[16] **The Reciprocal Enforcement Act** is an old Act that took effect in two (2) stages: Part I in 1922 and Parts II and III in 1937, respectively. The language

and the drafting style are somewhat outmoded but the provisions are not so obscure as to render interpretation difficult or unwieldy.

[17] By its Long Title, it is an Act to facilitate the reciprocal enforcement of judgments and awards in Barbados and other parts of the Commonwealth and in foreign countries. **Part I (sections 1 to 6)** deals with registration of Commonwealth judgments in Barbados. Those judgments must be obtained in a superior court in the United Kingdom and the application for registration must be made within twelve months of the date of the judgment, or such longer time that the court permits. **Section 3** provides that where a judgment was obtained in a superior court in the United Kingdom, the judgment creditor can apply to the local High Court to have the judgment registered. Criteria is established in order to satisfy the registration requirements and the effect of the registration, is set out at **subsection (3)**.

[18] **Section 6** stipulates that where the Governor General is satisfied that reciprocal arrangements have been made by the legislature of any part of the Commonwealth outside of the United Kingdom for the enforcement of judgments in that part of the Commonwealth, the Governor General may by order declare that Part I of the Act shall extend to judgments obtained in the superior courts in that part of the Commonwealth in much the same way that it applies to judgments obtained in a superior court in the United Kingdom.

[19] In sum, judgments obtained in a superior court in any part of the Commonwealth except the United Kingdom, may be registered in Barbados by order of the Governor General who must be satisfied that there are reciprocal provisions for the enforcement of Barbadian judgments in that Commonwealth country.

[20] However, the nub of this matter is the interpretation of **Part II** of the Act which comprises **sections 7 to 14**. It relates to the registration of non-commonwealth foreign judgments. **Section 8** is critical to understanding the registration of non-commonwealth foreign judgments. It states as follows:

“The Governor-General, if it appears that, in the event of the benefits conferred by this Part being extended to judgments given in the superior courts of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgments given in the High Court, may **by order** direct-

- (a) that this Part shall extend to that foreign country; and
- (b) that such courts of that foreign country as are specified in the order shall be deemed superior courts of that country for the purposes of this Part”.

[21] The foreign judgment is subject to the following criteria:

- (i) it is final and conclusive, and
- (ii) a sum of money is payable except money payable for taxes or other charges of a like nature or in respect of a fine or other penalty.

[22] **Section 9 (1)** stipulates that a judgment creditor may apply to the High Court within six (6) years from the date of the original judgment, or where there was an appeal against that judgment, after the date of the decision of the appeal, to have it registered in the High Court. However, there are certain requirements, namely:

- it has not been wholly satisfied; and
- it is enforceable by execution in the country of the original court.

[23] **Subsection (2)** provides that a judgment registered under this Part has the same force and effect as if it had originally been given and entered in a Barbadian court. However, the proviso to this section states that a judgment so registered cannot be executed where there are grounds for a party to make an application to set it aside, or if an application is made, after it has been finally determined.

[24] **Section 10** authorizes the making of rules of court under **Cap. 117A** for various matters, including:

“...making provision with respect to the fixing of the period within which an application may be made to have the registration of the judgment set aside and with respect to the extension of the period so fixed...”

[25] It should be noted at this stage that **Rule 72 of the CPR**, made pursuant to **Cap. 117A**, deals with the registration of foreign judgments. I shall return to that rule later.

[26] **Section 11** is the authority for setting aside a registration under the Act. It provides that a court may set aside a judgment that has been registered, on being satisfied, *inter alia*, that the judgment is not a judgment to which Part II applies, or, it was registered in contravention of the provisions of Part II. The powers of the court to set aside a registered judgment are set out at **section 12** in instances where an appeal is pending against, or that a judgment debtor is entitled to and intends to appeal, the original judgment. **Section 13** restricts proceedings for the recovery of a sum payable under a registered judgment under Part II to the registration of the judgment only.

[27] **Section 17** vests in the Governor General the authority to vary or revoke an order re. the registration and enforcement of a foreign judgment where there is substantially less favourable treatment of Barbadian judgments in a foreign country's courts. Finally, **section 18** deals with the issue of certificates of judgments obtained in Barbados.

CPR 2008

[28] **The CPR 2008** were made pursuant to **section 82 of the Supreme Court of Judicature Act, Cap. 117A**. **Rule 72 of the CPR 2008** outlines the procedure

for registering a foreign or commonwealth judgment. **Rule 72.1** assumes particular importance in this matter: it is set out as follows:

- (1) This Part deals with the procedure by which under the provisions of **any enactment** a judgment of a foreign court or tribunal may be registered in the High Court for enforcement within Barbados.
- (2) In this Part, “**relevant enactment**” means **any enactment** in force in Barbados which relates to the reciprocal enforcement of judgments.
- (3) This Part takes effect subject to the requirements of any **relevant enactment (emphasis supplied)**.

For the sake of completeness, **section 2 of the Interpretation Act, Cap. 1** defines “enactment” as:

“...an Act or a statutory instrument or any provision in an Act or statutory instrument...”

[29] **Rule 72(7)** of the **CPR 2008** deals with an application to set aside registration and subsection (3) is germane to the determination whether or not to set aside a foreign judgment. It states as follows:

“Where the court hearing an application to set aside the registration of a judgment is satisfied that

- (a) the judgment falls within any of the cases in which a judgment may not be registered under the provision of any enactment; or
- (b) it is not just or convenient that the judgment should be enforced within the jurisdiction, it may order the registration of the judgment to be set side on such terms as it directs”.

[30] It is therefore axiomatic that **Rule 72 of the CPR** relates only to the registration of a foreign or commonwealth judgment made or purported to be made under an Act of Parliament or a statutory instrument and not for example, an application via the common law. **The Reciprocal Enforcement Act** qualifies as an enactment to which **Rule 72 of the CPR** and **section 2 of Cap. 1** refers.

DISCUSSION

[31] The registered judgment was awarded by a superior court in New Jersey, U.S.A. and therefore is not a commonwealth judgment to be dealt with under Part I of the **Reciprocal Enforcement Act** as the U.S.A. is not a Commonwealth country. As a foreign judgment, it therefore falls under Part II of the Act that requires an order from the Governor General to approve its registration.

[32] It is interesting to note that both Mr. Chandler and Ms. Jemmott were at opposite ends of the spectrum vis a vis their interpretation of the provisions of Part II of the Act. However, the language of **section 8** is quite clear in vesting authority in the Governor General to extend Part II to judgments given in superior courts of foreign countries.

[33] In my opinion, the threshold test that the Claimant has to pass in this case is establishing that there is in existence, an order from the Governor General

extending reciprocal treatment to judgments from the U.S.A. If that threshold is satisfied, then an application for registration of the judgment could be properly made to the court under **section 9**. That section mandates that the applicant/claimant must be a judgment creditor under a judgment to which Part II applies.

[34] A perusal of the **Consolidated Index of Statutes and Subsidiary Legislation-Barbados 2019, Faculty of Law Library, U.W.I., Barbados** shows that the orders of the Governor General apply to Grenada, St. Vincent, British Guiana (Guyana), Trinidad, Leeward Islands, St. Lucia, Jamaica, Bahamas, Bermuda, Nigeria, New South Wales and the Federation of Nigeria. Those orders were made between 1922 and 1957 and New Jersey, U.S.A. is not included in that list. The absence of an order by the Governor General specifying New Jersey or the U.S.A. as a country/place to which Part II applies, is an absolute bar to proceedings to have the judgment registered in Barbados.

[35] Ms. Jemmott's submission that the registration was properly entered and that enforcement was not sought is not in concert with the legislation. The application for registration could only properly be made where the country/region of the superior court was permitted to do so by order of the Governor General. The authorities support this position.

[36] In **Sardinha v Excavations Ltd. et al (No.1), No. 793 of 1976 (Barbados)** (**Unreported**), the Plaintiff obtained a decision in the High Court of Dominica against the Defendant and sought to have it enforced in Barbados pursuant to the **Reciprocal Enforcement Act**. Williams C.J. (Ag.) (as he then was), said at paragraph 5:

“I have been unable to discover any order by virtue of which the provisions contained in Parts II and III of the **Foreign and Commonwealth Judgments (Reciprocal Enforcement) Act, Cap. 201** have been extended so that they apply to judgments of the High Court of Dominica. These parts of Cap. 201 relate to the registration of foreign judgments on a reciprocal basis and though sections 8 and 14 provide for their application and extension to judgments of Commonwealth courts, in the absence of the appropriate orders in relation to a particular Commonwealth country, those Parts can have no application to that country”.

[37] In **Westburg Anstalt and Profitstar Anstalt, BVIHCMAP 2013/0020**, company “A” commenced proceedings against company “B” in the courts of the Principality of Liechtenstein (“Liechtenstein”) after company “B” had defaulted on a loan agreement between them. Company “A” obtained a payment order from the first instance court in Liechtenstein, requiring company “B” to repay the sums and interest under the loan agreement. An action was commenced to enforce the foreign judgment in the British Virgin Islands (BVI) pursuant to the **Reciprocal Enforcement**

of Judgments Act, Cap. 65, and judgment was sought on the same terms as the final Liechtenstein judgment. The Court of Appeal held that:

“The Reciprocal Enforcement of Judgments Act ..., only applies to 15 countries/regions, Liechtenstein not being one of them. As a result, for a judgment creditor to enforce a final and conclusive money judgment from a Liechtenstein court in the BVI, he must look to the common law, and bring a claim based upon that foreign judgment for its enforcement”.

[38] Also, in the case of **John et al and Clico Life Insurance Limited, No. 1447 of 2013, (Barbados HC) (John et al)**, the Claimants sought to enforce in Barbados, a Judgment in Default of Defence granted in the Dominican courts. Delivering her decision in proceedings regarded as ‘confusing’, Cornelius J said:

“This matter arises as a result of a judgment obtained in Dominica. How then do the claimants jump from obtaining a Dominican judgment to applying for leave before a Barbadian court to ‘commence’ proceedings against the defendant? There are two ways. A claimant can commence proceedings to enforce a judgment if they first register the judgment pursuant to **section 13 of the Foreign and Commonwealth Judgments (Reciprocal Enforcement) Act, Cap. 201**. Section 13 specifically precludes any foreign judgment being enforceable without registration...If a claimant wishes to comply with the...provision, he must be satisfied that judgment was obtained in a jurisdiction for which reciprocity exists. In other words, that a Barbadian judgment could be registered there and enforced in the same manner.

In this instance, Dominica is not one of the countries for which such reciprocal enforcement exists”.

[39] Of the twelve countries/regions for which permission has been granted by order of the Governor General to register judgments from their superior courts in Barbados, New Jersey, U.S.A. is not included.

[40] Consequently, the New Jersey judgment does not qualify for registration under **sections 8 and 9** of the **Reciprocal Enforcement Act** and is hereby set aside pursuant to **section 11** of the Act and **regulation 72(7)** of the **CPR 2008**.

[41] This holding does not however preclude the Claimant from enforcing the judgment in a Barbadian court. The matter can be dealt with via the common law route. Mr. Chandler cited the case of **Andra Insurance Co. Ltd.**, where in Bermuda there were no legislative provisions for the enforcement of foreign judgments. POUND J reproduced his summary of the common law position given earlier in the case of **Ellefsen v Ellefsen (22 October 1993, Civil Jurisdiction No. 202/1993, unreported)**), as follows:

“The legal position as to the enforcement of foreign judgments is set out in **Dicey & Morris on the Conflict of Laws (11th edn, 1987) p 421**: ‘A judgment creditor seeking to enforce a foreign judgment in England at common law cannot do so by direct execution of the judgment. He must bring an action on the foreign judgment. But he can apply for summary judgment under Order 14 of the Rules of the Supreme Court on the ground that the defendant has no defence to the claim; and if his application is successful, the defendant will not be allowed to defend at all.’ There is no statutory mechanism here for

enforcing American judgments by means of registration and execution by the local court, and so this statement of the common law represents the normal method for enforcing such judgments in Bermuda, and there is no dispute about that”.

[42] Cornelius J in **John et al**, provided useful guidance to applicants seeking to enforce foreign judgments in Barbados that fall outside of the **Reciprocal Enforcement Act**. She stated:

“It follows therefore that the alternative method of coming before the court with a foreign judgment would be for the Claimant to sue on the judgment obtained. A Claimant would have to seek leave of the court to commence proceedings attaching the copies of the appropriate forms to commence proceedings in order for the court to have sight of the claim. Once leave to commence proceedings is granted, the Claimant could then pursue his action, seeking for example summary judgment in the suit”.

[43] This is an option that may still be available to the Claimant now that it has been established that registration of the Claimant’s judgment under the **Reciprocal Enforcements Act** is not permitted.

[44] Before leaving this point, Ms. Jemmott’s reference to a conflict between **sections 8 and 17** of the **Reciprocal Enforcement Act** is without merit. **Section 8** authorizes the Governor General to extend Part II to judgments given in superior courts of foreign countries where there was substantial reciprocity of treatment relating to enforcement of local judgments in the foreign countries.

[45] On the other hand, **section 17** does the converse: it permits the Governor General to vary or revoke an order re. the registration and enforcement of a foreign judgment where there has been substantially less favourable treatment of Barbadian judgments in the foreign country's courts. A broad hint of the meaning and intent of **section 17** can be found in the marginal note to the section which states: "Power to make foreign judgments unenforceable in this Island if no reciprocity." Shortly stated, a benefit granted under **section 8** may be taken away under **section 17** where there has been a diminution or removal of favourable treatment to Barbadian judgments by the foreign country.

[46] Ms. Jemmott's reference to **section 33 of Cap 117A** as the authority for enforcing a judgment after it is registered is not applicable to this case. The **Reciprocal Enforcement Act** has specific provisions for registration of a foreign judgment and a restriction on enforcement of a judgment unless registration takes place.

[47] Finally, it is agreed that the overriding objective of the **CPR** is to enable the court to deal with cases justly and that saving costs is an integral part of that process. However, in this case, the desire or intent to save costs cannot supplant compliance with the **Reciprocal Enforcement Act**.

Consequential Order(s).

[48] Based on my holding that the judgment issued by the Supreme Court of New Jersey and registered in Barbados on October 10, 2018 pursuant to **section 9(1)** of the **Reciprocal Enforcement Act** should be set aside, short shrift can be made of the second issue. **Section 13** of the Act bars any foreign judgment being enforceable without registration. It states as follows:

“No proceedings for the recovery of a sum payable under a foreign judgment, being a judgment to which this Part applies, other than proceedings by way of registration of the judgment, shall be entertained by any court in this Island”.

[49] In addition, in light of the setting aside of the registration, there is no cause of action before the court. Mr. Chandler’s reference to **The Caribbean Civil Court Practice** is applicable as the court cannot grant ancillary remedies without an existing cause of action. Therefore, the injunction granted pursuant to the order registering the foreign judgment can no longer stand.

CONCLUSION

[50] A judgment creditor who obtains a judgment against a judgment debtor in a superior court of a foreign country (non-commonwealth) can only have that judgment registered in Barbados where the Governor General of Barbados, makes an order to that effect, on being satisfied that there are reciprocal arrangements in place in that foreign country for the registration and enforcement of Barbadian judgments being registered there. In the event that

a judgment that does not qualify but is nonetheless registered, that registration can be set aside on the making of the requisite application to do so under **section 11 of the Reciprocal Enforcement Act and rule 72.7 of the CPR 2008**. In addition, where the judgment has been set aside, all consequential/ancillary orders made as a result of that registration will be of no effect.

DISPOSAL

[51] The Decision of the court is as follows:

- (i) The judgment of the Supreme Court of New Jersey, Morris County, Morristown, New Jersey 07962-2075, U.S.A. obtained therein on the November 22 2013, against the above-named Defendants and registered in the High Court of Justice of Barbados pursuant to **section 9(1) of the Foreign and Commonwealth Judgments (Reciprocal Enforcement) Act, Cap. 201** on October 10, 2018, is hereby set aside.
- (ii) The interim injunction granted pursuant to the said order is null and void and of no effect.
- (iii) Costs are awarded to the Defendants to be assessed if not agreed.


BARRY L. CARRINGTON
High Court Judge