10 pages.

2nd August, 1990.

IN T. ROYAL COURT OF THE ISLAND OF JERSEY

Before: Commissioner F. C. Hamon
Jurat D. E. Le Boutillier
Jurat E. W. Herbert

114.

BETWEEN	E. D. & F. MAN (SUGAR) LIMITED	PLAINTIFF
AND	YANI HARYANTO	DEFENDANT

Advocate J. G. White for the Plaintiff
Advocate M. H. Clapham for the Defendant

On the 4th April, 1990, by letter, E. D. & F. Man (Sugar) Limited ("Man") made an application to the Judicial Greffier in pursuance of Article 4 of the Judgments (Reciprocal Enforcement)(Jersey) Law 1960 and of Article 2 (2) and Article 3 of the Judgments (Reciprocal Enforcement)(Jersey) Rules 1961. This application was to register a judgment of the High Court of Justice Commercial Court whereby Man was given liberty by Mr. Justice Hobhouse to enforce a final arbritration award made by Nicholas Legh-Jones Q.C. on the 17th November, 1989 against Mr. Yani Haryanto for payment of US$24,506,192.90 and £2,300 respectively. The application was supported by an Affidavit of Thomas Stephen Keevil an English Solicitor in the employ of Simmons & Simmons.

The Order of the Court was duly made in the form of an Act dated the 18th April, 1990. It set out the facts and further ordered that Mr. Haryanto be at liberty to set aside the "said registration" within twenty-eight days after service of the Act upon him. It gave him the opportunity to apply to set aside the judgment if he applied with good grounds within the stipulated period. It stated that judgment would not be enforced until after the stipulated period or any extension of it. This first Act contained what is described as a "typographical error". It omitted to order that the very substantial sums of money "be registered as a judgment in the Royal Court of Jersey pursuant to the above law".

As soon as the error became apparent a second Act was prepared on the instructions of the Judicial Greffier.

That perfected Act is again dated the 18th April, 1990.

The first Act was duly served on Mr. Haryanto's English Solicitors in proper form on the 23rd April, 1990 and the second Act on the 30th April, 1990.

Whether or not we agree with Advocate Clapham's submission that the first Act was meaningless, whether or not we agree with Advocate White that the error did not affect the validity of the original order is not germane to what we have to decide because the summons to extend the stipulated period was only applied for on the 4th June 1990 which, even if we take time as running from the 30th April, is beyond the stipulated period. We do not see that the typographical error affected the validity of the decision made by the Judicial Greffier in any way at all.

We must, therefore, deal with this, the first of two summonses, before us today by asking whether the period of twenty-eight days within which Mr. Yani Haryanto was authorised to apply for the registration of the judgment to be set aside be extended.

Rule 1/5 of the Royal Court Rules 1982 states that "The Court ... may on such terms as it thinks just by order extend or abridge the period within which a person is required or authorised by a judgment order or direction to do any Act in any proceedings".

And then comes the crucial power upon which Mr. Clapham relies "the Court may extend any such period as is referred to in paragraph (1) of this Rule although the application for extension is not made until after the expiration of that period".

We say the "crucial power" because Rule 7 (5) of the Judgments (Reciprocal Enforcement)(Jersey) Rules 1961 reads as follows:-

> "The Court or the Bailiff may, on an application made at any time while it remains competent for any party to have the registration set aside, grant an extension of the period (either as originally fixed or as subsequently extended) during which an application to have the judgment set aside may be made".

Advocate Clapham drew our attention to the fact that the dichotomy (if such it be) is also apparent in England where Order 71 (5)(4) (which deals with the order for registration under the chapter dealing with Reciprocal Enforcement of Judgments) and Order 3 rule 5 (which deals with Extensions of time) are identical in every way with our Rules.

It does seem to us that the wider powers given by the Rules of Court override the narrow ambit of the powers given by the Reciprocal Enforcement Law. Even if that were not the case it does seem axiomatic that every Court must have an inherent power to control its own procedure. This would be evident even if the Royal Court Rules were entirely silent on the matter. There is no need for us to examine the point in any depth; both Counsel were agreed that this Court cannot be hampered in controlling its own procedure. The question that arises, and which is far more fundamental, is whether the Court should exercise its discretionary power, be it inherent or not.

Perhaps some background to this complex matter is necessary at this stage.

Mr. Harynato is an Indonesian citizen and a man of considerable wealth and influence in Indonesia. He has acted as an intermediary for the State of Indonesia. In 1982 he entered into two contracts which were to be governed by English Law. On the face of them the contracts provided for the sale and purchase of 400.000 metric tonnes of refined sugar. The sugar was apparently not to be physically imported into Indonesia but it was provided that there would be bills of lading and the buyer would be responsible for obtaining any necessary import licence. Failure to obtain an import licence was not to constitute sufficient 'force majeure' to cancel the contract. The seller Man are major international sugar traders. They argued that Mr. Haryanto had defaulted under his obligations. Man referred the matter to arbitration in the terms of the contract, to the Refined Sugar Association in London. The full reasons for the dispute need not concern us here. They are more than adequately summarised by Mr. Justice Steyn in the High Court judgment to which we shall refer later. The claim submitted to arbitration was for US$146,000,000. In 1984 Mr. Haryanto began an action against Man in the High Court. He sought a declaration that the contracts were not valid or binding. He contested that he was an agent and not liable under the contracts. Both the High Court and the Court of Appeal found against him on that issue. Following the judgment there followed settlement negotiations which resulted in a settlement agreement of all the English arbitration and legal proceedings. That settlement agreement was agreed to be governed by English Law.

On 25th March, 1986 Mr. Haryanto had begun a second English action. He sought a declaration that the contracts were unenforceable and/or void as being illegal and/or contrary to English public policy. This, too, was compromised by the Settlement agreement.

Mr. Haryanto agreed to pay a total of US$27,000,000 under the settlement agreement. It was payable in three 'tranches'. As security he had to provide written acknowledgement of his indebtedness and additional security. Any dispute was to be settled by English Queen's Counsel.

Having paid the first tranche of US$5,000,000 Mr. Haryanto defaulted. He commenced proceedings in Indonesia. Man replied with actions in Indonesia. On Mr. Haryanto's claim in the Indonesian Courts that the contracts were illegal those Courts found in his favour.

There evolved complex questions under the conflict of laws.

Before us, one of the main thrusts of Mr. Haryanto's argument is that until the 25th May, 1990 (when Mr. Justice Steyn delivered his judgment) he was restrained by injunctions imposed upon him in one form or another from the 9th February, 1989 (and particularly on the 22nd December, 1989). An affidavit supplied by his Solicitor Michael Oswald Tackley described those injunctions as "draconian extraterritorial injunctions". It must be stated that the Order does (as such an Order always will) give an opportunity for application for variation and no such application was made. Advocate Clapham explained the matter by saying that, with no assets situated within the United Kingdom, Mr. Haryanto waited for the decision of the High Court which was delivered on the 25th May. Had that decision gone in his favour then the whole of the proceedings in Jersey would have been unnecessary. As matters stand, the injunctions have been reimposed pending appeal but with these proceedings expressly not caught by the injunctions. But even if that argument were sound there was still time to take action in Jersey once Mr. Justice Steyn had delivered his judgment to ask for a further extension. No such action was taken.

In Jersey Demolition Contractors Ltd. v. Resources Recovery Board (C.A.) JLR 1985-86 77 the learned Bailiff sitting in the Court of Appeal analysed the English cases concerning enlargement of time and then said (at page 84) :-

> "My understanding of the view adopted by the English Court of Appeal when considering an application for the extension of time is that if there has been excessive delay and no explanation (or no adequate explanation) has been given, then the Court will not normally grant an extension of time, and in any event, in exercising its discretion, will not take into account the events or importance of the issues which are the subject of the appeal; Counsel argued that even if that were the position in England, a different view should be taken in Jersey., I see no reason to do so I have already quoted Rule 10 of the Court of Appeal (Civil)(Jersey) Rules 1964. There is no corresponding rule in the Rules of the Supreme Court, so it could well be argued that the Jersey Rules emphasise more strongly the importance of complying with the rules as to time".

Of course the Court in that case was dealing with the Appeal Court Rules and a delay of some 2 1/2 years, but there are analogies to be drawn. If we are to exercise a discretion we must, of course, have some material upon which to exercise that discretion. Otherwise, in the words of Lord Guest in Ratnam v. Cumarasamy (1964) 3 All ER at 935:-

> "If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation".

We have to say that we were not impressed by the reasons (albeit most ably put forward) that were given to us by Advocate Clapham. They struck us as tenuous in the extreme. One thing, however, has caused us concern. The application for the Order, as we have said, was made in the usual form of a letter. It was accompanied by an affidavit. That affidavit made no mention of the extraterritorial injunctions imposed upon Mr. Haryanto. These injunctions form part of the material for extension made by Mr. Tackley in his affidavit of the 1st June. The argument was met by Advocate White and by the affidavit of Thomas Stephen Keevil. Advocate White told us that no reference was made to the injunction in the application to the Judicial Greffier because the plaintiff did not feel that it was a matter that affected this Court's decision-making process. Mr. Haryanto's remedy lay with the English Court. Mr. Keevil, in describing the submission as being "wholly unmeritorious", said that Mr. Haryanto could have given written notice to his firm to seek consent to the variation at any time after the 21st December, 1989 or indeed could have made application to the High Court or (as the trial of the High Court action took

place on the 8th and 9th May 1990) to the trial Judge. Mr. Haryanto's conduct in seeking leave was described as "consistent with the behaviour of a judgment debtor who is intent upon taking any step whatsoever to delay and frustrate Man's pursuit of its legitimate entitlement to enforce the security provided by Mr. Haryanto under the Settlement Agreement".

All this may be true. We feel, however, that the facts should have been disclosed to the Judicial Greffier in some form or another. We do not know whether they would have influenced his decision (which was purely arbitary) to fix the delay at 28 days. He might well have made the order in a different form with time to run from the time that the injunctions were raised. We do not know. We are sufficiently concerned, however, that we will allow the extension of time asked for. We can therefore proceed to adjudicate upon the second of Advocate Clapham's submissions which is the application to set the judgment aside.

Article 6 of the Judgment (Reciprocal Enforcement)(Jersey)Law 1960 gives six mandatory reasons for setting aside a registered judgment. None of these apply to the present case. It is only within the provisions of Article 6 (b) of the law that the applicant can succeed. That Article reads :-

> "On an application duly made by any party against whom a registered judgment may be enforced, the registration of the judgment may be set aside if the Royal Court is satisfied that the matter in dispute in the proceedings in the original Court had previously to the date of the judgment in the original Court been the subject of a final and conclusive judgment by a Court having jurisdiction in the matter."

Advocate Clapham argued strenuously for an adjournment until the Court of Appeal reaches a decision in England. He asks us to assume that Mr. Haryanto will succeed in his appeal. If that were to happen then, of course, the judgment would become of no effect. Advocate White puts the corollary. It is not for this Court to anticipate how the English Court of Appeal will decide, the order was not made subject to appeal. Man is a company of very substantial financial standing and if Mr. Haryanto were to succeed then his remedy would lie against Man for the recovery of his funds. The argument is not a novel one. That argument of course seems to ignore the provisions of Article 7 of the law which reads :-

"If on an application to set aside the registration of a judgment the applicant satisfies the Royal Court either that an appeal is pending, or that he is entitled and intends to appeal against that judgment, the Court, if it thinks fit, may, on such terms as it thinks just, either set aside the registration or adjourn the application to set aside the registration until after the expiration of such period as appears to the Court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by the competent tribunal."

It appears that the monies in Jersey represent the sale proceeds of assets provided by Mr. Haryanto as security for the performance of his obligations under the settlement agreement. The monies are held in the joint names of each of the parties' English solicitors.

The injunctions were framed so as to apply world-wide. They were designed to enjoin Mr. Haryanto from seeking the recognition of the Indonesian judgment anywhere in the world.

Although Advocate White developed in his argument a scathing criticism of Mr. Haryanto's procedural behaviour we must recall that in his judgment Mr. Justice Steyn said this:-

"There is already in existence an Indonesian judgment. It was given in proceedings begun by Man. It was unsuccessfully appealed by Man. The Indonesian Court was a Court of competent jurisdiction. The procedure adopted is not criticised. The correctness of the Indonesian judgment as a matter of Indonesian law cannot be questioned. Reliance on that judgment was only defeated on the grounds of English principles of 'res judicata' and English public policy".

The difficulty that arises is that it is not the judgment of Mr. Justice Hobhouse made on the 17th November, 1989 that is being appealed.

The judgment that is registered in the Royal Court is the judgment of the 3rd January, 1990 which records the judgment of Mr. Justice Hobhouse made on the 30th November 1989.

The applicant is not appealing against that judgment. He is appealing to the Court of Appeal against the judgment of Mr. Justice Steyn made on the 25th May, 1990. In that judgment the learned Judge said that it would be left "to Courts in foreign jurisdictions to choose (if the matter arises) whether to recognise the judgments of the English or Indonesian Courts."

Advocate Clapham argues that the effect will be same. If the English Court were to uphold the decision of the Indonesian Court then the judgment of the 3rd January, 1990 would fall away as though it had been successfully appealed. The appeal of course will raise very complex issues concerning "res judicata", the recognition of foreign judgments and illegality. They also involve complex issues of public policy.

We have to have regard to the wording of Article 7 and the clear finding of this Court where questions of judgments obtained in England arise as in Lane v. Lane 1985-86 JLR 48 where the Court held that "on the matter before the Royal Court there was a declaration of a competent English Court, properly made, submitted to by the same parties and not appealed, the doctrine of comity required that the declaration of the English Court be given effect to, provided that it was clear that the defendant had every opportunity to raise all relevant defences at that hearing".

We can see all the cogent arguments that Advocate Clapham makes in regard to the possible outcome in the Court of Appeal but we cannot see that Article 7 applies in this case.

We note that we have a discretion whether or not to set aside the judgment on the basis of the Indonesian judgment. It appears to us that the reasoning of the legislature concerning a prior foreign judgment is based on reciprocity and not on comity but Advocate Clapham stressed that his proper application was not to set aside but to ask the Court to adjourn the application on a "wait and see" basis. The High Court made a declaration on validity which is under Appeal. That is, in effect, until after the application is finally disposed of.

We have to consider what is best to strike a balance of fairness between the parties. In the result we are not prepared to exercise our discretion in Mr. Haryanto's favour. There is too much that we are asked to assume by way of analogy. We intend to apply the rules according to the judgment obtained and to consider whether any action has been taken in England against that judgment. We consider that it has not. We do not need, in our view, to enter the tangled undergrowth that has sprung from the decision of the Indonesian Court judgment. We were, in effect not asked to do so. We do not think that the Indonesian judgment arising out of the facts that gave rise to it would in any event have caused us undue concern.

In the circumstances we decline either to set the judgment aside or to allow the matter to be adjourned for what could be a very long period of time if judgment of the English Court of Appeal should eventually lead to an appeal to the House of Lords.

We therefore confirm the Act of Court of the 18th April, 1990.

AUTHORITIES

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