

ROYAL COURT
(Samedi Division)

31st July, 1995

155.

Before: The Bailiff, and
Jurats Bonn and Le Ruez

IN the matter of the Judgments (Reciprocal Enforcement) (Jersey) Law, 1960.

AND in the matter of a Judgment of the High Court of Justice of England and Wales, Queen's Bench Division, Leeds District Registry, obtained in the action between Swish Products Limited, Plaintiff, and Graham Hardwick, Second Defendant, and dated the 13th day of October, 1993.

Application by the Defendant pursuant to Rule 9 of the Judgments (Reciprocal Enforcement) (Jersey) Rules, 1961, for an Order setting aside the Order of the Deputy Judicial Greffier of 28th March, 1994, registering the said Judgment of 13th October, 1993, as a Judgment of the Royal Court of Jersey.

Advocate J.D. Melia for the Second Defendant.
Advocate A.D. Hoy for the Plaintiff.

JUDGMENT

5 THE BAILIFF: This is an application by Graham Hardwick, to whom we refer as "Mr. Hardwick", to set aside the registration of a judgment obtained against him by Swish Products Limited, in England, on 13th October, 1993. It raises a short but interesting point of law.

10 The history of the matter is that Mr. Hardwick, together with two others, guaranteed the obligations of a company called Climaseal Window Company Limited, to which we refer as "Climaseal", to the extent of £50,000. The form of guarantee was not a model of clarity. Indeed, His Honour Judge Lightfoot expressed the view, when delivering judgment in England that:

"Whoever drafted that document ought to be banned from holding a pen in his hand again, because it is common ground that the guarantee totally misrepresents the agreement reached between the parties".

5

Fortunately the terms of the guarantee are not relevant today, although it may be that they will have to be examined on another occasion.

10

In 1991 or thereabouts, Climaseal collapsed and Mr. Hardwick and his two co-guarantors were called upon to honour the guarantee.

15

20

Proceedings were begun in the Leeds County Court. It appears that the proceedings were compromised in respect of one guarantor, Mr. Langton, by the payment of £1,800 and in respect of another, Mr. Fernleigh, by the payment of £20,000. That last payment was not, however, made until 24th March, 1994. In the meantime, on 13th October, 1993, Swish Products Limited had obtained judgment in the Leeds County Court against Mr. Hardwick for £43,000 together with interest of £8,576.44, making a total of £51,576.44.

25

30

On 20th December, 1993, the proceedings were transferred to the High Court of Justice, pursuant to section 42(3) of the County Courts Act, 1984, for the purpose of enforcement. Subsequently a certified copy of the judgment was issued under the hand of Hebbert J. Upon that certified copy of the judgment of the High Court application was made pursuant to the Judgments (Reciprocal Enforcement) (Jersey) Law, 1960, to which we refer as "the 1960 Law," for the registration of the judgment in Jersey.

35

On 28th March, 1994, the Deputy Judicial Greffier ordered that the judgment be registered as a judgment of the Royal Court, pursuant to the 1960 Law, for the sum of £51,576.44, together with interest in the sum of £1,875.80 being interest from the date of judgment to the date of registration. Notice of registration was given to Mr. Hardwick following which this application to set aside the registration was duly made.

40

Miss Melia, who appeared for Mr. Hardwick, based her application on four grounds.

45

1. She argued that the judgment was not amenable to registration as it was originally given by the Leeds County Court which is not a court of superior jurisdiction.

2. She submitted that the judgment included a sum representing VAT and ought to be disallowed on that ground.

50

3. She submitted that the judgment should not have been registered for £51,576.44 in that there had been a payment of

£20,000 in reduction of the debt by Mr. Fernleigh, as mentioned above.

5 4. She submitted that the figure of £1,875.80 for interest included an element of interest upon interest which was not allowable.

10 The application first came before the Court on 28th July, 1994, when, after hearing some argument, the Court adjourned the matter for the production of further evidence in relation to each of the above grounds.

15 It has taken some considerable time for that evidence to be produced but we now have before us affidavits sworn by Mr. Hardwick and by Mr. Roger Alfred Patten, an English Solicitor acting for the plaintiff company.

20 In support of the first contention, Miss Melia drew our attention to the relevant provisions of the 1960 Law. Article 2 provides that:

"'original court' means in relation to any judgment the court by which the judgment was given".

25 Article 3(1) provides:

30 (1) *The States, if satisfied that, in the event of the benefits conferred by this Part of this Law being extended to judgments given in the superior courts of any country outside the Island, whether within or without Her Majesty's dominions, substantial reciprocity of treatment will be assured as respects the enforcement in that country of judgments given in the Royal Court may by Act direct -*

35 (a) *that this Part of this Law shall extend to that country, and*

40 (b) *that such courts of that country as are specified in the Act shall be deemed superior courts of that country for the purposes of this Part of this Law.*

45 Article 4(1) provides:

50 (1) *A person, being a judgment creditor under a judgment to which this Part of this Law applies, may apply to the Royal Court at any time within six years after the date of the judgment, or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings to have the judgment registered in the*

Royal Court, and on any such application the court shall, subject to proof of the prescribed matters and to the other provisions of this Law, order the judgment to be registered:

Provided that a judgment shall not be registered if at the date of the application -

(a) it has been wholly satisfied, or

(b) it could not be enforced by execution in the country of the original court.

Article 6(1) provides:

(1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment -

(a) shall be set aside if the Royal Court is satisfied -

(i) that the judgment is not a judgment to which this Part of this Law applies or was registered in contravention of the foregoing provisions of this Law;...

Pursuant to Article 3 of the 1960 Law the States have, by the Judgments (Reciprocal Enforcement) (Jersey) Act, 1973 extended the relevant provisions to England and Wales and provided that the House of Lords, the Court of Appeal and the High Court of Justice shall be deemed to be superior courts for the purposes of Part II of the 1960 Law. There is, however, no mention of the County Court.

Mr. Hoy drew our attention, on behalf of Swish Products Limited, to the provisions of section 42 of the County Courts Act, 1984, as amended by the Courts and Legal Services Act, 1990. The relevant parts of that section provide:

42. Transfer to High Court by order of a County Court.

(1) Where a county court is satisfied that any proceedings before it are required by any provision of a kind mentioned in sub-section (7) to be in the High Court it shall -

(a) order the transfer of any proceedings to the High Court or

(b) if the court is satisfied that the person bringing the proceedings knew or ought to have known of that requirement order that they be struck out.

5

(2) Subject to any such provision a County Court may order the transfer of any proceedings before it to the High Court.

10

(3) An order under this section may be made either on the motion of the court itself, or on the application of any party to the proceedings.

15

(4) The transfer of any proceedings under this section shall not affect any right of appeal from the order directing the transfer.

20

(5) Where proceedings for the enforcement of any judgment or order of a County Court are transferred under this section -

(a) the judgment or order may be enforced as if it were a judgment or order of the High Court and

25

(b) subject to sub-section 6, it shall be treated as a judgment or order of that court for all purposes.

30

(6) Where proceedings for the enforcement of any judgment or order of a County Court are transferred under this section -

35

(a) the powers of any court to set aside, correct, vary or quash a judgment or order of a county court and the enactments relating to appeals from such a judgment or order shall continue to apply and

40

(b) the powers of any court to set aside, correct, vary or quash a judgment or order of the High Court and the enactments relating to appeals from such a judgment or order shall not apply.

45

Mr. Hoy argued that although the judgment was originally given by a County Court it had, by virtue of this section, been transformed into a judgment of the High Court and was to "be treated as a judgment or order of that court for all purposes". That submission may well be right as a matter of English Law but we are concerned with the question of whether such a judgment can be registered in Jersey under the 1960 Law.

50

Article 3 of the 1960 Law underlines the fact that the root principle is one of reciprocity. It is clear that a judgment of the Petty Debts Court would not be amenable to registration in England under the terms of the corresponding English Act. But the phraseology of Article 3 (1) appears to us to be crucial. This was not a judgment "given in the superior courts of England and Wales". It was a judgment given by the Leeds County Court. It became a judgment of the High Court only for a specific and internal purpose, that is to say for the purpose of execution.

We have reached the conclusion, therefore, that the judgment of the Leeds County Court was not a judgment to which the 1960 Law applies. We are reinforced in that conclusion by the reference in Article 4 of the 1960 Law to "the original court". The original court is defined as being the court by which the judgment was given i.e. in the context of this application, the Leeds County Court. Nothing in the 1960 Law appears to contemplate a shifting of jurisdiction from one court to another.

Our conclusion on this first ground of objection is of course determinative of the matter and there is no need for us to consider the other objections raised by counsel for Mr. Hardwick. The application is accordingly granted and the Order of the Deputy Judicial Greffier of 28th March, 1994, registering the judgment of 13th October, 1993, is set aside.

[Counsel made further submissions, and the Bailiff continued]

My decision is that costs must follow the event and I therefore order that the plaintiffs, Swish Products Limited, will pay the taxed costs of Mr. Hardwick. In relation to the application for leave to appeal, this was a novel point of law and I accordingly grant leave.

No Authorities.