Michaelmas Term
[2020] UKPC 26
Privy Council Appeal No 0041 of 2019

JUDGMENT

Yearwood (Appellant) *v* Yearwood (Respondent) (Antigua and Barbuda)

From the Court of Appeal of the Eastern Caribbean Supreme Court (Antigua and Barbuda)

before

Lord Kerr
Lady Black
Lord Briggs
Lord Sales
Lord Leggatt

JUDGMENT GIVEN ON

19 October 2020

Heard on 24 June 2020

Appellant
David Joseph QC
Hugh Marshal
(Instructed by Marshall & Co (Antigua))

Respondent
David Dorsett PhD

(Instructed by Watt, Dorsett & Co (Antigua))

LADY BLACK:

1. The parties in this appeal were divorced in 2009 but, following the practice adopted by the courts in Antigua and Barbuda, the Board will refer to them as the husband (who is the appellant) and the wife (who is the respondent).

2. The wife sought financial remedies regulating the family's finances in the aftermath of the divorce. The financial remedy proceedings were determined, in December 2009, by Philip Moor QC, sitting as a Deputy High Court Judge in the Family Division of the High Court in England and Wales. The detailed order that he made in the wife's favour included provision for the transfer of certain property by the husband to the wife, and for the payment by him of a lump sum of just over £4 million. There followed proceedings by the wife seeking to enforce the payment of the lump sum outstanding under that order, and also an associated costs order. The Board will come to the detail in due course, but it is enough to say, by way of introduction, that she sought to do this, inter alia, by registering English orders in Antigua and Barbuda under the Reciprocal Enforcement of Judgments Act Cap 369 ("the Act"). This appeal is against the orders that she obtained for that registration. It requires the Board to consider the operation of the Act, and of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 ("CPR"), in relation to orders made in financial remedy proceedings.

Brief history of the registration proceedings

3. Following the making of the December 2009 order, Philip Moor QC made a further order on 10 May 2010. This order, which was made without notice to the husband, provided that he "must pay to the [wife] immediately the sum £3,144,456.80". As appears from the accompanying order of the same date, this was the figure still due under the December 2009 order, in particular pursuant to the lump sum provision. The wife was permitted to register the order in the High Court of Antigua and Barbuda, but the Honourable Mr Justice Mario Michel set the registration aside in December 2011. The Board will need to look in a little more detail later at his reasons for so doing, but in essence they were two-fold. First, section 3(2)(c) of the Act provides that no judgment shall be ordered to be registered if the judgment debtor was not duly served with process of the original court (that is the court by which the judgment in question was given) and did not appear. The May 2010 order fell foul of this because it was made without notice to the husband. Secondly, the order which the wife sought to register had been made in family proceedings and therefore could not "be registered under Part 72 of the CPR" because that did not apply to family proceedings by virtue of Rule 2.2 of the CPR.

4. On 9 July 2012, Philip Moor QC (by now Mr Justice Moor) discharged his order of 10 May 2010 and made a further order (referred to in the contemporaneous documentation as a "money judgment order"), the application having been made this time on notice to the husband. This order will be referred to hereafter as "the money judgment order" or "the July 2012 order". As before, the order set out the figure standing due under the December 2009 order, by now £1,882,851, and provided that this was to be paid immediately. In June 2013, the wife applied to the High Court of Antigua and Barbuda for the July 2012 order to be registered. She also applied, at the same time, for the registration of a costs order ("the costs order") relating to the financial remedy proceedings, the Senior Court Costs Office, on 12 November 2010, having issued a default costs certificate, requiring the husband to pay within 14 days the sum of £592,602.33, with interest running from 7 December 2009. The husband responded with an application for a declaration that the wife was not entitled to register the orders.

5. The matter came before the Honourable Madame Justice Clare Henry who, in 2015, granted the wife's application for registration of the July 2012 order, but refused the registration of the costs order, on the basis that the application had been made out of time.

6. Both parties appealed to the Court of Appeal. The wife was wholly successful in that appeal, in that the Court of Appeal affirmed the registration of the July 2012 order and permitted the registration of the costs order. It is from the Court of Appeal's order of November 2017 that the husband appeals to the Board.

The issues for the Board

7. The Board can crystallise the issues which require determination into four main questions. These have been formulated taking into account that it is common ground between the parties that the wife's application for registration is properly characterised as "family proceedings" for the purposes of the CPR, although, as will appear later, the Board would sound a cautionary note as to the validity of this approach. With that caveat, broadly stated, the four questions are:

> (1) Should the wife's application have been dismissed on the grounds of issue estoppel and/or abuse of process on the basis that the matter had already been conclusively decided by Michel J in December 2011?
>
> (2) In principle, can the orders be registered under the Act, notwithstanding that the procedure set out in Part 72 of the CPR does not apply to the wife's application because the CPR do not apply to family proceedings?

(3) Are the orders outside the scope of the Act in any event, on the basis that neither qualifies as a "judgment" (as defined in section 2(1) of the Act) for the purposes of section 3 of the Act? This question turns on the particular attributes of the orders, emanating as they do from financial remedy proceedings.

(4) Did the Court of Appeal err in permitting the registration of the costs order after the expiry of twelve months from the date of the judgment, see section 3(1) of the Act?

The main legal provisions

8. The following provisions of the Act require particular attention:

"**2.** (1) In this Act-

"judgment" means any judgment or order given or made by a Court in any civil proceedings, whether before or after the passing of this Act, whereby any sum of money is made payable, and includes an award in proceedings on an arbitration if the award has in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a Court in that place; …

(2) Subject to rules of Court, any of the powers conferred by this Act on any Court may be exercised by a Judge of the Court.

3. (1) Where a judgment has been obtained in the High Court in England or Northern Ireland or in the Court of Session in Scotland 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 Court to have the judgment registered in the High Court and on any such application the Court may, if in all the circumstances of the case they think it is just and convenient that the judgment should be enforced in Antigua and Barbuda, and subject to the provisions of this section, order the judgment to be registered accordingly.

(2) No judgment shall be ordered to be registered under this section if -

…

(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

…

(3) Where a judgment is registered under this section -

(a) The judgment shall, as from the date of registration, be of the same force and effect, and proceedings may be taken thereon, as if it had been a judgment originally obtained or entered up on the date of registration in the High Court;

(b) The High Court shall have the same control and jurisdiction over the judgment as it has over similar judgments given by itself, but in so far only as relates to execution under this section;

(c) The reasonable costs of and incidental to the registration of the judgment (including the costs of obtaining a certified copy thereof from the original Court and of the application for registration) shall be recoverable in like manner as if they were sums payable under the judgment.

(4) Rules of Court shall provide -

(a) For service on the judgment debtor of notice of the registration of a judgment under this section, and

(b) For enabling the High Court on an application by the judgment debtor to set aside the registration of a judgment under this section on such terms as the Court thinks fit; and

(c) For suspending the execution of a judgment registered under this section until the expiration of the period during which the judgment debtor may apply to have the registration set aside.

…"

"**5.** Provision may be made by rules of Court for regulating the practice and procedure (including scales of fees and evidence), in respect of proceedings of any kind under this Act."

9. Turning to the CPR, Rule 2.2 sets out the proceedings to which they apply. As material, it provides:

"2.2 (1) Subject to paragraph (3), these Rules apply to all civil proceedings in the Eastern Caribbean Supreme Court in any of the Member States or Territories.

(2) …

(3) These Rules do not apply to the following–

(a) family proceedings; …"

10. Part 72 of the Rules deals with reciprocal enforcement of judgments. It begins:

"72.1 (a) This Part deals with the procedure whereby under the provisions of any enactment a judgment of a foreign court or tribunal may be registered in the High Court for enforcement within a Member State or Territory…"

Approaching the issues

11. The Board now turns to the four questions that require determination. The first question might be thought to be the logical starting point, the husband's argument being that the wife should not even be allowed to advance her application because she is seeking to relitigate questions that have been determined against her already. However, it will be convenient to start with the second and third questions, as this will permit the Board to introduce the disputed territory, thus facilitating understanding of the first question.

Questions 2 and 3: Registration permitted under the Act?

The parties' submissions on questions 2 and 3

12. The husband advances two reasons why the orders cannot be registered under the Act for enforcement.

13. First, he puts forward an argument concerning the interplay between the Act and the CPR. The essential steps in this argument are:

> (1) an order can only be registered under the Act using the procedure set out in Part 72 of the CPR,
>
> (2) the CPR do not apply to family proceedings (which, as is common ground, include the application for registration in this case), and
>
> (3) therefore the orders cannot be registered.

14. Fundamental to this first argument is the submission that the Act does not stand alone. Mr Joseph QC submits, on the husband's behalf, that the powers arising under it are only exercisable if rules of Court have been made, pursuant to the Act, which are applicable to the case in question. He refers to three provisions in the Act which he says support this. First, he relies upon section 2(2) as establishing his proposition, on the basis that it says: "[s]ubject to rules of Court, any of the powers conferred by this Act on any Court may be exercised by a Judge of the Court" (emphasis added). Secondly, he submits that it is also confirmed by section 3(4), which sets out that rules of Court shall provide for certain specified safeguards for the judgment debtor. Thirdly, he also invites attention to section 5 which states that provision may be made by rules of Court for regulating practice and procedure in proceedings under the Act. As the only rules of Court which deal with these matters are the CPR, it follows, in his submission, that an application for registration can only be made under the CPR, a route not open to the wife as family proceedings are excluded from the scope of the CPR by rule 2.2(3) of those rules. Therefore, in the husband's submission, she is not entitled to bring an application under the Act at all and could only attempt enforcement by a common law action in debt.

15. The husband's second argument is that orders for the division of property and periodical payments orders are outside the Act in any event. He submits that, to be registrable as a "judgment" under the Act, a judgment has to be final, and that a financial remedy order, such as that made in the wife's favour here, does not satisfy that

requirement. He relies upon *Nouvion v Freeman* (1889) 15 App Cas 1 in support of this proposition. That case decided that an action could not be brought on a foreign judgment for the recovery of a debt where the judgment did not finally and conclusively settle the existence of the debt so as to render the matter res judicata between the parties. So too, in his submission, the December 2009 order made by Philip Moor QC regulating the family finances lacks finality. As explained in oral submissions, this lack of finality derives from two particular elements of the order. First, para 2 of the order, which required the payment to the wife of the lump sum of £4,121,037, contains provisions applicable in default of compliance, including the transfer of a bond to her, and the variation of a trust so that she could receive payment of the surrender value of a policy. It is submitted that these provisions provide for a continual adjustment of the sum due, reducing it by July 2012 to the sum with which the present proceedings are concerned. Secondly, it is submitted that the December 2009 order did not extinguish the cause of action between the parties because, by para 8, it was provided that the wife's claims under the Matrimonial Causes Act 1973 were not extinguished until the order was satisfied. Further points were made in the written case, and the Board will also deal with them below, in so far as is necessary.

16. On the wife's behalf, Dr Dorset responds that the jurisdiction of the High Court to register judgments pursuant to section 3(1) of the Act is not ousted by the absence of applicable rules of Court. As he puts it, just because an application cannot proceed by way of Part 72 of the CPR does not mean that the application cannot be brought at all. On the contrary, it may still be brought under the Act. And, in his submission, the orders from the English court were within the scope of the Act, each being a "judgment" as defined in section 2(1).

The Board's view on questions 2 and 3

17. The Board considers that there is, indeed, jurisdiction under the Act to order the registration of the orders as the wife seeks.

18. The Board agrees that each of the two orders that the wife sought to register for enforcement constitutes a "judgment" as defined in section 2(1). It does not consider that it can derive much assistance, in determining what was intended to come within the definition of the term "judgment" in the Act, from older common law cases, such as *Nouvion v Freeman*. This is particularly so when the order with which the Board is concerned is an order made in proceedings brought under the Matrimonial Causes Act 1973, which sets up a specialised statutory scheme for the making of orders regulating family finances on the breakdown of a marriage. The Board therefore focuses on the words of the definition in section 2(1). As there provided, what is required is that there is a judgment or order in civil proceedings whereby a sum of money is made payable.

19. It is important to concentrate on the orders that the wife is actually seeking to enforce, remembering that her application is not, in fact, for the registration of the order of December 2009, but of the money judgment order made by Moor J on 9 July 2012 requiring the husband to pay £1,882,851 immediately, and the order of 12 November 2010 for the payment of a quantified sum of costs, together with interest. Those are both orders in civil proceedings whereby a sum of money is made payable. Both set out clearly the sum to be paid by the husband and the period within which payment is to be made. Neither order lacks finality.

20. The Board needs to address specifically the matters raised by Mr Joseph which are said to render the money judgment order insufficiently final to qualify as a judgment. It does not consider that any of these matters undermine the finality of the order.

21. First, the Board turns to Mr Joseph's argument that orders under the Matrimonial Causes Act for division of property (even if including a lump sum payment) and/or periodical payments orders following divorce cannot count as a "judgment" within the Act. The order that the wife seeks to register has to be looked at as part of a single indivisible order, he says, and therefore it is "not a straightforward order for payment of monies but rather a division of an estate on divorce", and accordingly not capable of registration.

22. In the Board's view, it cannot be of any consequence that the lump sum debt originally came to be payable by virtue of an order which regulated the family's financial affairs as a whole, and incorporated provisions relating to the transfer of property as well as the payment of cash sums. The original lump sum provision, incorporated in the December 2009 order, made a sum of money payable by the husband. Unlike a periodical payments order, the lump sum order was not variable as to amount. It was for a fixed sum, and the fact that it might ultimately come to be discharged, or partially discharged, by the means set out in para 2 of the order, rather than by the payment of cash directly from the husband to the wife, in no way prevents it being properly characterised as an order whereby a sum of money is made payable. The money judgment order to which it gave rise, and which the wife seeks to enforce, is even more plainly an order for the payment of a sum of money.

23. The Board should deal with the case of *Platt v Platt* [1958] SC 95 as Mr Joseph sought to derive support from this for this aspect of his argument. *Platt v Platt* was not, however, concerned with the sort of issue that arises in the present case, and nothing said in it assists Mr Joseph. The application there was an application by Mr Platt to register a New Zealand order in Scotland under the Administration of Justice Act 1920. This was resisted by his wife, Mrs Platt. The main part of the order, and the part upon which Mr Platt wished to rely, was a provision setting aside the assignation by him to Mrs Platt of all of his interest under his grandfather's will. No sum of money was made payable by that provision itself, but Mr Platt argued that the whole of the order was

nonetheless registrable, including this all-important provision, because it contained, inter alia, a consequential order that Mrs Platt pay a sum representing the costs of the action and disbursements. The court refused to accept that the inclusion of an incidental order of this type rendered the whole order registrable as a judgment whereby a sum of money was payable. Interestingly, it was not averse to the reverse possibility (much more akin to the present case) that the order for the payment of costs may possibly be a severable and separate part of the judgment and itself registrable, but no such argument had been advanced.

24. The Board is no more persuaded by the husband's argument that paragraph 8 of the December 2009 order is an obstacle to registration. Paragraph 8 is a limited provision, designed to protect the wife against the possibility that full implementation of the order could not be achieved. It in no way undermines the certainty and finality of the December 2009 order, which the husband was obliged to satisfy, and the wife was entitled to enforce against him. This is amply demonstrated by the making of the money judgment order on 9 July 2012.

25. That brings the Board to the husband's argument that the absence of applicable rules of Court deprives the Act of any effect in the present proceedings. The Board does not interpret the Act as subject to rules of Court in the way suggested. In its view, the Act gives the High Court power to order the registration of a judgment whether or not rules of Court have been made regulating the practice and procedure in respect of the proceedings. Section 5 of the Act provides only that provision "may" be made by rules of Court, not that it "must". And it is concerned with rules regulating the practice and procedure in respect of proceedings under the Act, rather than providing that rules may dictate the types of proceedings that will be covered by the Act. As for section 2(2), in providing that "[s]ubject to rules of Court, any of the powers conferred by this Act on any Court may be exercised by a Judge of the Court", it cannot be interpreted as making the exercise of the powers under the Act conditional upon there being applicable rules of Court in existence. That interpretation is not consistent with the wording of section 2(2), and would also sit oddly with section 5 being a facilitative provision, not imposing a mandatory requirement for the drafting of rules. It seems to the Board that section 2(2) is more likely to have been intended to preserve the possibility of rules of Court being used to fine-tune the allocation of proceedings between the judges of a court, according to the issues arising. As for section 3(4), although this *is* in mandatory terms, a failure to make rules providing the specified safeguards for the judgment debtor cannot have the consequence that the powers conferred on the High Court by the Act are not exercisable at all. In addition to other more general considerations as to the impact of such a failure upon the operation of a statute, the Board particularly notes that section 3(4) is concerned with the making of rules of Court regulating procedure only after a judgment has already been registered under the Act.

26. Reliance is placed, in the husband's argument, on section 17(1) of the West Indies Associated States Supreme Court Order 1967. This enables the making of rules

of Court regulating the practice and procedure of the High Court in relation to its jurisdiction and powers. So, the husband submits, it follows that the CPR have legislative force. The Board does not consider that this advances his case, however. The question is not what standing the CPR have, nor yet what rule making power exists, but whether the Act is to be interpreted as only effective where rules of Court are made, and for the reasons set out, that is not the correct interpretation in the Board's view.

27. Mr Joseph also turns to rule 72(1)(a) of the CPR for support for his argument. In providing that "[t]his Part deals with the procedure whereby…a judgment may be registered", it makes clear, in his submission, that this is the comprehensive code that deals with registration of judgments under the Act; if a particular type of case is not covered by that code, as family proceedings are not, then registration under the Act cannot be sought. That argument founders, in the Board's view, precisely because the CPR do not apply to family proceedings, as rule 2.2(3)(a) provides. Therefore, nothing contained in Part 72 can have any effect in relation to family proceedings, and it does not assist at all as to whether such proceedings are within the scope of the Act.

Question 1: Issue estoppel and/or abuse of process

28. The husband argues that the issues in relation to the wife's application under the Act were finally decided against her by Michel J, when she sought to register the May 2010 money judgment order. He submits that Michel J held that the Act did not permit the registration of orders from family proceedings, that that determines the issue against the wife, and that she cannot relitigate it in relation to the later money judgment order, emanating, as it does, from the same family proceedings and concerning the same lump sum.

29. It is necessary to look at the judgment of Michel J in a little detail. The application to register the order (at that time the order of 10 May 2010) had been made pursuant to Part 72 of the CPR, as can be seen from paragraph 17 of the judgment, and the contention for the wife was that Part 72 applied because, although the order in question was made in family proceedings, an application to register it did not constitute family proceedings. Michel J rejected this proposition, holding that "the process by which an order made in family proceedings is registered cannot but be within the ambit of the family proceedings". He went on to hold that the "CPR expressly provides that it does not apply to family proceedings and so the order cannot be registered under the CPR". This was not, therefore, a ruling on the issue that is central to these proceedings, namely whether an application can be made for registration under the Act even if the CPR do not apply.

30. The Board shares the view of Henry J and the Court of Appeal that questions of res judicata and issue estoppel do not arise on the facts of this case. If the husband has

an argument at all, it could only relate to abuse of process (see *Henderson v Henderson* 3 Hare 100) on the basis that the present issue should have been raised before Michel J.

31. The Board would not accept such an argument, however. Dr Dorsett, for the wife, drew attention to what Lord Bingham had to say in *Johnson v Gore-Wood & Co* [2002] 2 AC 1 (at page 31) about *Henderson v Henderson*. This makes clear that a broad, merits-based judgment, taking into account all of the circumstances, is involved in determining whether there has been an abuse of the court's process. There is no material to support such a conclusion here. The Board notes what the Court of Appeal had to say at paragraph 37 about the wife's adherence to due process in the proceedings. Further, it is of significance that the wife's application before Michel J was bound to fail, whatever the answer with regard to the applicability of the Act, because, as Michel J himself pointed out to the parties, the husband was not served with the process that produced the money judgment order, and did not appear, and section 3(2)(c) therefore presented an insuperable obstacle to registration (see, for example, para 21 of Michel J's judgment). That was sufficient reason for the registration of the order to be set aside. Accordingly, there would have been no point in the wife pursuing the argument that is now pursued that an application can be made under the Act without needing to have recourse to Part 72 of the CPR. Her application for registration would have failed anyway, as she clearly recognised by obtaining an order from Moor J which did comply with section 3(2)(c). Furthermore, had she run the present argument before Michel J and had it decided against her by the judge, she would not realistically have been able to appeal on that point, given that her appeal would inevitably have been doomed because of section 3(2)(c).

32. In the circumstances, the Board would not interfere with the decision of Henry J and the Court of Appeal that there was nothing to prevent the wife from pursuing the argument that registration can take place under the Act, notwithstanding that the CPR are not applicable to the application.

Question 4: The registration of the costs order

33. Henry J refused registration of the costs order on the ground that it was applied for outside the twelve-month time limit in section 3(1) of the Act. The Court of Appeal allowed the wife's appeal against this decision. It relied on the Privy Council decision of *Quinn v Pres-T-Con Limited* [1986] 1 WLR 1216 ("*Quinn*") as establishing that, regardless of whether a formal application to extend time is made or not, the court has to consider whether an extension of time is just and convenient having regard to all the circumstances of the case. Henry J had not directed her mind to this, so the Court of Appeal determined the issue itself. Armour JA (Ag), with whom the other members of the court agreed, said (para 44):

> "although the delay of approximately three years between the making of the default costs certificate and the application to have the same registered appears inordinate, all the circumstances of the case will include the relevant and material circumstances of the process of litigation in this case, ongoing throughout that period both in England and within this jurisdiction. …It cannot be said that the wife rested on her laurels for three years, as the record shows that she was engaged in a constant stream of litigious proceedings through that period, all related to her separation from the husband in the very proceedings which eventually culminated in judgment and the orders of Mr Justice Moor…
>
> 45. Lastly, I can discern no prejudice which would be visited on the husband through the registration of the default costs certificate. He is no doubt obligated to pay costs to the wife as a result of the decision of the Honourable Mr Justice Moor… in the original suit, and the registration of the default costs certificate within this jurisdiction will simply allow for the enforcement against him of that existing obligation…"

34. The husband argues that the costs order should not have been registered because it was made in November 2010 and the application to register it was not commenced until June 2013, well outside the twelve months after the date of the judgment during which application should normally be made (see section 3(1) of the Act). His argument acknowledges that the Act provides that application can be made within "such longer period as may be allowed by the Court", but he submits that there must be material before the Court to justify permitting a longer period. Furthermore, on his argument, the material has to be adduced by the applicant for registration, and cannot simply be material contained within the court papers. In his submission, there was no material on which the Court of Appeal could have extended time, whether adduced by the wife or otherwise available. And in so far as the Court of Appeal proceeded upon the basis that no conceivable prejudice was caused to him by the grant of an extension of time, that was wrong too, he submits. He was prejudiced, in his submission, because the wife's delay ought to have had the consequence that she was prevented by limitation from enforcing the judgment. He bases this on the assertion that once the time for seeking registration expired, the wife's only means of enforcement was by a common law action on the judgment, and that action became time-barred in November 2016. By granting the wife extra time to commence her application for registration of the costs order in November 2017, the Court of Appeal wrongly circumvented the time bar and deprived him of a defence to the wife's action to enforce against him.

35. The husband relies upon *Thamboo Ratnam v Thamboo Cumarasamy* [1965] 1 WLR 8. The Judicial Committee of the Privy Council was there concerned with the Rules of the Supreme Court of the Federation of Malaya as to appeals to the Court of

Appeal, and in particular as to the time for filing of the record of appeal. The rules provided that the record of appeal had to be filed within six weeks after the entry of the appeal "or within such further time as the Court of Appeal may allow". The Court of Appeal refused to extend the time for filing the record and the appellant appealed to the Board. In concluding that the appeal should be dismissed, the Board said that the "Rules of Court must prima facie be obeyed, and in order to justify a Court in extending the time during which some step in procedure requires to be taken there must be some material upon which the Court can exercise its discretion." It was of the view that the Court of Appeal was entitled to conclude that the affidavit there filed by the appellant did not constitute such material. The husband argues that the same position appertains here, in that the wife adduced no material supporting the grant of an extension of time.

36. The Board approaches the appeal in relation to this aspect of the case with considerable caution in view of the fact that the Court of Appeal was exercising a discretion in permitting the application for the registration of the costs order to be commenced outside the usual twelve month period, and the Board is always slow to interfere with an exercise of discretion. It is quite clear from section 3(1) that a "longer period" *can* be allowed and that the court may order the registration of a judgment, notwithstanding that application was made after the expiry of twelve months from the date of the judgment, provided that "in all the circumstances of the case they think it is just and convenient that the judgment should be enforced".

37. Plainly a court's decision to permit a late application must be properly based upon relevant material, but in so far as the husband is seeking to argue that it is confined to material presented by the wife in support of an extension of time, the Board cannot accept that artificial constraint, particularly given that *Quinn* establishes that no formal application for the extension of time is required. It considers that the Court of Appeal was entitled to look at all the material available to it and, furthermore, that it was entitled to reach the view that it was just and convenient for the costs order to be registered.

38. The Court of Appeal had before it the wife's notice of application for registration of both the July 2012 money judgment order and the costs order, together with an affidavit in support. This affidavit explained that the July 2012 order was the substantive order and it said that "[h]aving obtained the substantive order …it is just and convenient that both the substantive order and the order for costs granted earlier be registered and enforced in this jurisdiction even though the order for costs was issued more than one year ago". The husband complains that this does not explain the reasons for the delay, but the Board takes from it the valid point that the costs order was ancillary to the lump sum order, and that it made sense to await the money judgment order and seek registration of the two orders together. The Court of Appeal was able to evaluate this decision in the context of the overall picture of the litigation between the parties, as paragraph 44 of its judgment shows.

39. It remains to deal with the husband's argument that he was prejudiced by the delay in relation to the costs order. His argument seems to be put on the basis that the period of delay extended up to the decision of the Court of Appeal in November 2017 that the registration of the costs order should be allowed. That, in the Board's view, is not correct. The relevant period of delay is that up to the commencement of the registration application in June 2013. That is the period for which the wife could be held responsible, delays thereafter apparently arising by virtue of the court process, including the apparent failure of Henry J, in April 2015, to consider whether to exercise her discretion in the wife's favour. When it decided how to exercise its discretion, the Court of Appeal gave proper consideration to the delay up to June 2013. It was, furthermore, entitled to take the view, as set out in para 45, that the husband was not prejudiced by the registration of the costs order because he was obliged to pay the costs, and registration would simply allow for enforcement against him of that existing obligation.

40. It follows that the Board would not interfere with the Court of Appeal's decision in relation to the registration of the costs order.

Disposal

41. For the reasons set out above, the Board will humbly advise Her Majesty that the appeal against the registration of both the money judgment order and the costs order should be dismissed.

Family proceedings?

42. In conclusion, the Board returns briefly to the question of whether the wife's application for registration should properly be classed as "family proceedings" for the purpose of the CPR, as was conceded on her behalf. It notes that this was raised before Michel J, the wife arguing that although the order itself was made in family proceedings, an application to register the order is an enforcement proceeding, not a family proceeding. Michel J rejected this argument, taking the view that "the process by which an order made in family proceedings is registered cannot but be within the ambit of the family proceedings" (para 17). The wife's concession before the Board is therefore understandable.

43. However, the Board is not as convinced as Michel J that the application to register the money judgment should, in fact, be classed as family proceedings. It can appreciate why the special characteristics of family proceedings may have led to their exclusion from the CPR. However, once the family proceedings have resulted in a money judgment of the type with which this appeal is concerned, the process of enforcement of that judgment is no different from the process of enforcement of a money judgment arising from standard civil proceedings. In those circumstances, it is

hard to identify any reason why the enforcement process should be classified differently from the enforcement process in other civil proceedings. As it has not heard argument on the point, however, it would be inappropriate for the Board to do more than to identify its hesitation about the matter.