[2020] IEHC 240

THE HIGH COURT

[2018 No. 14 FJ]

IN THE MATTER OF AN APPLICATION PURSUANT TO ARTICLES 45, 46 AND 51 OF REGULATION NO. 1215/2012 AND PURSUANT TO ORDER 42A OF THE RULES OF THE SUPERIOR COURTS (JURISDICTION, RECOGNITION AND ENFORCEMENT OF JUDGMENTS) 2017

AND

IN THE MATTER OF A JUDGMENT OF THE SOFIA CITY COURT, REPUBLIC OF BULGARIA

BETWEEN

HENRY ALEXANDER BROMPTON GWYN-JONES

APPLICANT

AND

RICHARD WILLIAM MCDONALD

RESPONDENT

JUDGMENT of Mr. Justice Meenan delivered on the 19th day of May, 2020

Introduction

1. The applicant seeks an order pursuant to Article 45(1)(b) of the Regulation (EU) No. 1215/2012 and O. 42A of the Rules of the Superior Courts refusing the recognition of a judgment obtained by the respondent against the applicant in the Sofia City Court, Republic of Bulgaria.

2. The judgment in question issued from the Sofia City Court, Republic of Bulgaria on 11 November 2016 and directed the applicant to pay to the respondent the sum of €119,522.24 together with costs as measured.

3. The applicant maintains that he was never served with the proceedings and so had no opportunity to defend himself. The judgment was appealed to the Supreme Court of Cassation of the Republic of Bulgaria on 17 July 2018. This appeal was not on the merits of the respondent's claim but rather on the issue of service. The Supreme Court of Cassation refused to set aside the judgment by an Order of 17 July 2018. No appeal lies from this decision.

4. The respondent has sought to enforce the judgment in this jurisdiction.

Relevant provisions of Regulation (EU) 1215/2012 (the Regulation)

5. Article 45 provides: -

> "1. On the application of any interested party, the recognition of a judgment shall be refused:
>
> (a) if such recognition is manifestly contrary to public policy (ordre public) in the Member State addressed;
>
> (b) where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;"

Article 46 provides: -

> "On the application of the person against whom enforcement is sought, the enforcement of a judgment shall be refused where one of the grounds referred to in Article 45 is found to exist."

Article 52 provides: -

> "Under no circumstances may a judgment given in a Member State be reviewed as to its substance in the Member State addressed."

6. The court is clearly precluded from considering the substance of the judgment, save insofar as recognition of the judgment would be *"manifestly contrary"* to public policy within this jurisdiction. The court, where, as in this case, judgment has been given in default of appearance, may consider the issue of service. However, this is subject to the proviso that the defendant failed to challenge the judgment when he could have done so. In this case, the defendant/applicant did challenge the judgment, albeit unsuccessfully. I have to say that I do not find the wording of this provision to be as clear as it ought to be. It could mean where, as in this case, the defendant/applicant did commence proceedings to challenge the judgment then this Court could not consider the matter of service. However, I will proceed on the basis that this Court may consider service.

Facts concerning service

7. In his affidavit, the applicant states that the document which he believes initiated the claim was sent by courier to his home address: -

> "…I am further informed that documents received have been received from MIB Express, the couriers concerned. As appears from those documents, they were signed for by a Mr. O'Riordan. I did not authorise a Mr. O'Riordan, or any other person, to accept this document."

8. The applicant states that he was out of the country at the time. However, there is no further information as to who Mr. O'Riordan might be. Though the applicant states that Mr. O'Riordan was not authorised to accept documents, there is no suggestion that the said Mr. O'Riordan was not lawfully on the premises at the time, or what steps, if any, were taken as to finding out what Mr. O'Riordan did with the documents.

9. Under Article 53 of the Regulation, Sofia City Court certified that *"the document instituting the proceedings or an equivalent document was served on the defendant"* on 19 August 2016. In response to this, the applicant states in his affidavit that he was out of the country, again, on this date: -

> "…While I cannot dispute that someone may have accepted and signed for a registered letter, I did not authorise anyone to do so and I was unaware that any legal document had been delivered on this, or the earlier, occasion. I was not furnished with a copy of any letter or document or (sic) this nature."

Once again, there was no follow-up by the applicant to identify either who signed for the document or what happened to the document.

Consideration of the issue of service

10. Reliance was placed on the following passage from the judgment of Coulson J. in *British Seafood Limited v. Wlodzimierz Kruk* [2008] EWHC 1528: -

> 24. A number of Strasbourg authorities were drawn to my attention dealing with issues relating to service. In case 166/80 Klomps v Michel [1981] ECR 1-1593, the court concluded that, even if a court of the State in which the judgment was given had already found that service had been effected, the court seized in the other contracting State was still required to consider whether such service was effected in sufficient time to enable the defendant to arrange for his defence..."

The applicant also referred to the decision of Baker J. in *Haier Europe Trading SRL v. Mares Associates Limited* [2017] IEHC 159. However, this judgment, insofar as it deals with the issue of service, relates to the service of the judgment, not the initiating proceedings.

11. The respondent submits that the document referred to in the judgment of the Sofia City Court was served by registered post by the County Registrar of Cork who is the "*transmitting agency*" for the service of such documents. This is provided for in O. 14B of the Rules of the Circuit Court. This Order provides that documents are to be served by registered post. This is what happened here.

12. The respondent further relies on the judgment of the Supreme Court of Cassation, which specifically considered the issue of service: -

> "…For first one – under the provisions of Article 14 of Regulation/EC/No.1393/2007 of the EU Parliament and the Council dated 13/11/2007 by a registered mail with return slip, and the other two – under the provisions of Article 7 of Regulation/EC/No.1393/2007 of the EU Parliament and the Council dated 13/11/2007. The performance of the last two services in compliance with law of the Member State addressee has also been established by certificates under Article 10 of Regulation/EC/No.1393/2007 of the EU Parliament and the Council dated 13/11/2007, issued by the Court of I. The set aside request does not state any allegations about procedural violations of the Irish law by the services done through the Court, nor does it give any evidence in this aspect…"

13. It seems to me that the only conclusion which I can draw from this is that service was lawfully effected of the document described as being: *"the document instituting the proceedings or an equivalent document"*. Service by registered post does not mean that it has to be personal service. As mentioned earlier in this judgment, there is a complete lack of any information as to what happened to the document after delivery had been accepted, or whether the applicant carried out any investigation or fully established the circumstances he claims led to a situation where he did not have sight of it. The

document was served nearly four months in advance of the day when judgment was given and there is no suggestion that such a period was not adequate for the preparation of a defence.

Matter of public policy

14. It is clear from the affidavits filed in this application that there is and has been a considerable amount of commercial litigation between the applicant and the respondent and the various companies they are involved in. The applicant, in this regard, refers to two matters.

15. Firstly, there was litigation in the Isle of Man which resulted in a lengthy judgment in proceedings entitled *Gort (Holdings) Limited v. MRP Brazil Limited*. A "*worldwide freezing order*" was made against MRP Brazil Limited, apparently this was an Isle of Man company in which the respondent served as a director and was a substantial shareholder. Clearly this is litigation between separate legal entities whereas the instant case is between the above named individuals. I cannot see that the Isle of Man proceedings would be a reason for not enforcing the judgment. However, at the same time, the instant case does not affect the worldwide freezing order.

16. The second matter concerns a notice on the filing to the ICC of a Request for Arbitration by the applicant against the respondent in respect of certain proceedings. A document entitled "*Request for Arbitration*", of 28 January 2020, was exhibited in an affidavit by the Solicitor instructed by the applicant. Upon examination of the contents of this document, it does not indicate that the instant case is amongst those that have been referred to arbitration. Thus, I cannot see how the applicant can make any point on this.

Conclusion

17. By reason of the foregoing, I reach the conclusion that the applicant is not entitled to the relief sought. As this judgment is being delivered electronically, I invite the parties to make further submissions on the consequent orders and costs.