



ROYAL COURT
(Samedi Division) 32.

16th February, 1995.

Before: The Deputy Bailiff and Jurats
Herbert and Bonn

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
Chancery Division, Manchester District Registry,
obtained in the action between Geoff Bell Holdings Limited
the Plaintiff, and Ian Geoffrey Bell the Defendant,
dated the 15th day of February, 1993

Advocate A. P. Begg for the Plaintiff
Advocate P. Landick for the Defendant

JUDGMENT

5 THE DEPUTY BAILIFF: This is an application by Ian Geoffrey Bell
to set aside the order of the Deputy Greffier made on the 25th
August, 1993 to register a Judgment obtained in the High Court on
the 15th February, 1993 under the provisions of the Judgments
10 (Reciprocal Enforcement) (Jersey) Law 1960. The Judgment was
obtained in England under the provisions of Order 14 of Rules of
the Supreme Court and is better known as a summary judgment. As we
understand the Order 14 procedure, where a statement of claim has
been served on the defendant, whether indorsed on the writ or
served separately and the defendant has entered an appearance, the
15 plaintiff may apply for summary judgment against the defendant
that the defendant has no defence to the claim. The Judgment is
called a "summary" judgment because it is dealt with expeditiously
and without ordinary incidental formalities. It will be a final
judgment if the claim is liquidated and an interlocutory judgment
if unliquidated. The summary judgment was not of course obtained
by default but after argument "inter partes". The judgment was
obtained by Geoff Bell Holdings Limited against Mr. Bell. The
principal protagonists are Mr. Bell, who lives in Spain for fiscal
20 reasons and a Mr. Bland, who was Mr. Bell's accountant and

financial adviser, who lives and practises in England and who has now an interest in Geoff Bell Holdings Ltd.

5 The judgment of the Manchester High Court was duly registered
in Jersey on the 15th August, 1993. The Judicial Greffier, in his
discretion, gave twenty eight days after service upon Mr. Bell's
solicitors, Messrs. Grainger, King & Hymes for the defendant to
10 apply to set aside the registration pursuant to Rule 9 of the
Judgments (Reciprocal Enforcement) (Jersey) Rules 1961. That time
has long passed. Notice of the registration was duly served on Mr.
Bell's solicitors. We are asked to set aside the registration (or
to declare it null and void) on two grounds:

15 First, that the judgment was not registrable under the
provisions of the law in that it was not, in the terms of the law
"[a] judgment of a superior court of a country to which this part
of the Law extends being final and conclusive as between the
parties thereto ..." (Art 3(2) of the Law).

20 Second, that even if that argument fails it should in any
event be set aside as the summary judgment obtained in the
Manchester High Court was set aside in England on the 8th August
1994 and Mr. Bell was given unconditional leave to defend the
25 action.

Our statute is based almost entirely on the Foreign Judgments
(Reciprocal Enforcement) Act, 1933.

30 In Morris "The Conflict of Law" (1984) (3rd Ed'n) the author
says this:

35 *"The judgment must be "final and conclusive"*
in the court which rendered it. It must be
shown that in the court by which it was
pronounced, it conclusively, finally and for
ever established the existence of the debt of
which it is sought to be made conclusive
evidence in this country, so as to make it res
40 *judicata between the parties. So a summary*
judgment in which only a limited number of
defences can be pleaded, and which is liable
to be upset by the unsuccessful party in
plenary proceedings where all defences may be
45 *set up, is not final and conclusive. However,*
at common law a foreign judgment may be final
and conclusive even though it is subject to an
appeal, and even though an appeal is actually
pending in the foreign country where it was
50 *given. But in a proper case a stay of*
execution would no doubt be ordered pending a
possible appeal".

That commentary gives as its authority the House of Lords case Nourion v. Freeman (1989) A.C.1 at 12 where Lord Watson said:

5 *"The decree of the 5th of April 1878 appears*
 to me to be deficient in certain particulars
 which are necessary in order to bring it
 within that principle. It is not necessarily a
10 *decision which exhausts the merits of the*
 controversy between the parties, because in
 "executive" proceedings the Court can
 entertain no plea stated by the defendant
 which does not go to payment, satisfaction, or
 waiver of the plaintiff's claim. What, in my
15 *opinion, constitutes a still graver defect is*
 the fact that the same Court which issued the
 "executive" decree has jurisdiction, in an
 "ordinary" or "plenary" action, to entertain
 and dispose of any and every plea which the
 original defendant may think fit to urge
20 *against his liability, and in that action can*
 re-try those pleas which have already been put
 forward and repelled in the "executive" suit.
 If the decision of the Court in the "plenary"
 differs, in whole or in part, from that
25 *pronounced by it in the "executive" suit, the*
 latter is, to the extent of that difference,
 superseded or nullified.

30 *The English cases to which I have already*
 referred establish a more liberal rule in
 regard to the enforcement of foreign judgments
 than is to be found in the older authorities;
 but no decision has been cited to the effect
35 *that an English Court is bound to give effect*
 to a foreign decree which is liable to be
 abrogated or varied by the same Court which
 issued it. *All the authorities cited appear to*
 me, when fairly read, to assume that the
 decree which was given effect to had been
40 *pronounced causa cognita and that it was*
 unnecessary to inquire into the merits of the
 controversy between the litigants, either
 because these had already been investigated
 and decided by the foreign tribunal, or
45 *because the defendant had due opportunity of*
 submitting for decision all the pleas which he
 desired to state in defence. In order to its
 receiving effect here, a foreign decree need
 not be final in the sense that it cannot be
50 *made the subject of appeal to a higher Court;*
 but it must be final and unalterable in the
 Court which pronounced it;"

That means then that an action cannot be brought in England (or in Jersey) upon a foreign judgment for the recovery of a debt, if the judgment does not finally and conclusively (subject to an appeal to a higher Court) settle the existence of the debt so as to become "res judicata" between the parties. The case turned on the distinction between executive and plenary proceedings. The Court found that in the Spanish proceedings only limited defences could be raised by the defendant to executive proceedings and in particular could not set up any underlying defence to the action.

In the commentary to the Rules of the Supreme Court (Order 14/3 - 4/35) we read this:

"Applications made under Order 14 are heard in the first instance by a Master, or District Judge, and appeal lies in every case to the Judge in Chambers".

In this jurisdiction (it is not particularly relevant) Rule 7 allows an appeal from the Greffier to the Inferior Number. (See Rule 15/2 ... (1))

Mr. Landick says that "the same Court" reviews the decision in both jurisdictions. Mr. Begg's argument is that a summary judgment is final and conclusive and that the appeal to the higher Court is not an appeal to the same Court but the very appeal envisaged in our law and the English statute.

In Civil Jurisdiction and Enforcement of Foreign Judgment: (1987) the learned author Mr. Peter Kaye said at page 1337:

"The foreign judgment must be final and conclusive, in the sense that it cannot be altered in later proceedings between the same parties in the same foreign court".

It is the commentary to words identical to those in our law that Mr. Landick draws to our attention. The commentary reads:

"Therefore, not e.g. foreign equivalents of English summary judgments under R.S.C. or judgments in default under Order 13. See Nourion v. Freeman."

We are dealing here with a statute. The Brussels Convention 1968 applies to the UK but not to Jersey. Article 25 of the Convention has been enacted in terms in the UK by the Civil Jurisdiction and Judgments Act 1982. What is interesting in that fact is that at page 1350 of Mr. Kaye's work it is stated that:

"Article 25 in no way limits judgments ... which are or have become unappealable under

national law, or are other than summary or non contentious." (our underlining).

And finally, on this point, in the same work, Mr. Kaye says
at page 1362:

"(2) NO REQUIREMENT THAT FOREIGN JUDGMENT IS
FINAL AND CONCLUSIVE OR UNAPPEALABLE

(a) Final and conclusive

Under both the common law régime of
recognition and enforcement of foreign
judgments in England and the Foreign Judgments
(Reciprocal Enforcement) Act 1933, it is a
condition of recognition and enforcement that
the foreign court dealt finally and
conclusively in its judgment with the cause of
action before it. Thus Cheshire writes of
common law recognition:

A foreign judgment does not create a
valid cause of action in England unless
it is *res judicata* by the law of the
country where it was given. It must be
final and conclusive in the sense that it
must have determined all controversies
between the parties. If it may be altered
in later proceedings between the same
parties in the same court, it is not
enforceable by action in England.

No such requirement of finality and
conclusiveness exists as a general condition
of recognition and enforcement of foreign
judgments under the Convention, and,
accordingly, judgments may be entitled to such
recognition and enforcement, notwithstanding,
for example, that they are:

(a) provisional and protective judgments,
capable of subsequently being overturned
by the same foreign courts which granted
them,

(b) summary judgments of the type granted
in English courts under R.S.C. Order 14,
which may later be set aside or varied on
such terms as the court thinks just, or
judgments in default of notice of
intention to defend, which may similarly
be set aside under English procedure:

We find the explanations given above to be of limited assistance. We will not explore the other authorities given to us by learned Counsel. In Hambros Bank (Jersey) Limited v. Eves (11th January, 1995) Jersey Unreported CofA., the learned Court of Appeal cited the test given by the Privy Council in Esnouf v. A.G. where Lord Blackburn said:

"The first question that arises in the case of an appeal from Jersey before we consider whether the appeal is one which it would be proper to grant is this: has the time for granting appeal come? Has it reached the position of being a matter decided by a definitive sentence".

The learned Court of Appeal said this in its judgment:

"The question whether an order of this Court is an order from which this Court has power to grant leave to appeal does not depend upon the technical consideration distinguishing final from interlocutory judgments. It depends upon the much more pragmatic test stated by Lord Blackburn: Is it an order determining the rights of the parties by a definitive sentence".

Those words seem, if we may say so respectfully, to shed light on our darkness.

The Judicial Greffier received a judgment of the High Court. It was adjudged that the defendants pay the plaintiffs £3,034,403.37 including interest. The Order is for judgment. It is a liquidated sum. It appears on the face of the document. The matter was heard *inter partes*. We were told by Counsel that application could have been made within 5 days to have the matter set aside. The Greffier stayed his order for 28 days. Nothing happened within the 28 days other than that at the end of September (after the prescribed time had elapsed) there was an exchange of correspondence between Grainger, King & Hymes and Mr. Begg. The English lawyers wrote to say that *"the judgment of the Manchester District Registry at the High Court of Justice is subject to appeal"*. Mr. Begg replied to say, quite rightly in our view, that the *"fact that an appeal is pending does not alter the position that a judgment is final and conclusive and that reciprocal enforcement of that judgment can therefore be effected under the law"*. Furthermore the Court-sealed copy of the judgment attached to the affidavit made in support of registering the judgment was certified by a Deputy District Judge of the Supreme Court. He certified that the judgment was issued in accordance with Section 10 of the Foreign Judgments (Reciprocal Enforcements)

Act 1933. Section 10 of the Act reads that *"where a judgment under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty has been entered in the High Court against any person and the judgment creditor is desirous of enforcing the judgment in a foreign country to which part 1 of this Act applies, the court shall issue a certified copy of the judgment"* In section 11(1) of the Act, "judgment" means a judgment or order given or made by a Court in any civil proceedings for the payment of a sum of money."

In our view the Greffier was bound to receive and register the judgment under the Law. If the High Court certified that the Order was a judgment suitable for enforcement then it cannot be that the Judicial Greffier was bound to examine the matter further. In any event we find that the Order was properly obtained and it was registered in Jersey in due form.

Matters then took a quite different turn. Many and various proceedings were by now splintering off the reciprocally registered judgment.

In his helpful Chronology of Events, Mr. Begg has this entry for 8th August, 1994:

"Kolbert J sets aside summary judgment given by High Court in Manchester on 15th February, 1993 and gives Mr. Bell unconditional leave to defend".

That is borne out by Mr. Landick's affidavit of the 6th September 1994 which states, *inter alia*:

"Mr. Whitehead has faxed to me a copy of a letter from the solicitors acting for the plaintiff in the English action which confirms their understanding of the terms on which the English judgment has been set aside".

The exhibited letter states *inter alia* that it is envisaged that the Order will be:

1. *The Order of the Court dated 15th February 1993 be set aside.*
2. *The defendant do have unconditional leave to defend.*

3. *The plaintiff do pay the defendant's costs of this appeal and of the summons before the District Judge in any event.*

5 We have not seen the Order. It is not apparently yet drawn. Both counsel before us conceded that the judgment of the 15th February 1993 HAD BEEN SET ASIDE. In our view, there is nothing further that needs to be said. No law, no myriad of paper, no endless argument will avoid the ineluctable conclusion that if the English judgment has been
10 set aside there is no judgment to enforce in Jersey.

Mr. Begg, as we understood his argument, said that because the judgment was properly registered (and we agree with that view) and because no application was made within 28 days to have the
15 judgment set aside in Jersey there is, in effect, no power in the Court to review that time period. The judgment is now unassailable. It has taken the form of a *chose jugée*. He did not agree with this Court's ratio in E.D and F Man (Sugar) Ltd. v. Haryanto. (1990) JLR 169. We set it out here once more:

20

"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".

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

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"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".

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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.

45

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5 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
10 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
15 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
20 exercise its discretionary power, be it
inherent or not."

20 The judgment in our view having been set aside cannot be
allowed to remain registered here. The provisions for setting
aside are contained within Article 7 of the Law. (Mr. Landick asks
us to set aside under the Statute, the common law or under the
Court's inherent jurisdiction). There has been an appeal in
25 England. As a result of that appeal the judgment has been set
aside. We therefore invoke our powers under Article 7. If the
Court has the power to set aside on the basis of a contemplated
30 appeal, then there must be read within that power, the right to
set aside when an appeal has been successfully made and the
originating Court has set the judgment aside.

30 Mr. Begg, while conceding nothing, argued that even if we had
the power to set aside and even if the facts justified the
exercise of that power it was now too late. The plaintiff was
estopped by a consent order dated 22nd December, 1993. On that
35 day, the plaintiff brought a summons requesting the Court to
order:

- 40 1. that the registration pursuant to the Act of
Court dated the 25th August, 1993, of the
Plaintiff's above-mentioned judgment should be
set aside and/or the enforcement thereof
should be stayed until fourteen days after the
45 determination of the appeal by the defendant
against the said judgment notwithstanding that
the time limited by the Rules for making this
application has expired; and
- 50 2. that the costs of this application should be
paid by the defendant.

50 As we recall, on that day Mr. Landick was without proper
instructions from his client, who is outwith the jurisdiction.
Discussion took place between Counsel and the Court as to whether

the summons should be "dismissed" or "withdrawn". On the basis that he was without instructions, Mr. Landick consented to the summons being dismissed.

5 We intend to follow the guidance given in Siebe Gorman & Co.
v. Pricepac Ltd (1982) 1 All ER 377. This case was not cited to us
but it seems to cover the point conclusively without having to
enter into such esoteric arguments as ostensible agency. There is
an ambiguity in the words "by consent". The expression could
10 indicate a contract or merely show that the parties did not object
to the making of the order. In our view, the consent order made on
the 22nd December was clearly of the latter type. Mr. Begg, and
everyone else in Court, knew that Mr. Landick did not have
authority because he did not have instructions. He told us so.

15

We order that the judgment enforced in Jersey be declared to be of
no effect from the date upon which it was set aside in England. We
cannot proceed further without hearing Counsel.

Authorities

- Judgments (Reciprocal Enforcement) (Jersey) Law, 1960.
- Judgments (Reciprocal Enforcement) (Jersey) Rules, 1961.
- R.S.C. (1995 Ed'n):0.14.
- Foreign Judgments (Reciprocal Enforcement) Act 1933.
- Morris: Conflict of Law (1984: 3rd Ed'n): p.125.
- Nairion -v- Freeman (1889) A.C.1 @ 12.
- Kaye: "Civil Jurisdiction and Enforcement of Foreign Judgments (1987):pp1337, 1350, 1362.
- Civil Jurisdiction and Judgments Act 1982.
- Hambros Bank (Jersey) Ltd -v- Eves (11th January, 1995) Jersey Unreported CofA.
- E.D. and F Man (Sugar) Ltd -v- Haryanto (1990) JLR 169.
- Siebe Gormand & Company -v- Pricepac, Ltd (1982) 1All ER 377.
- Kaye: "Enforcement of Foreign Judgments Worldwide" p.194.
- Kaye: "Recognition of Judgments outside the European Community" p.p.66 & 67.
- Jackson -v- Jackson (1970) JJ 1285.
- Jersey Demolition Contractors -v- R.R.B. (1985-86) JLR 77.
- Strata Surveys -v- Flaherty (15th Febvruary, 1994) Jersey Unreported CofA.
- Colt Industries, Inc. -v- Sarlie No.2. [1966] 1 WLR 1287.
- Berliner Industriebank A.G. -v- Jost (1971) 2QB 463.
- R.S.C. (1993 Ed'n): Vol 1: s.42/5a.; s.47/1; s.59/13; s.45/11;
s.58/11; s.14/3; s.71:
Vol 2: ss.4606-8, 4613-14:
- Showlag -v- Mansour (12th June, 1991) Jersey Unreported.
- Showlag -v- Mansour (23rd December, 1991) Jersey Unreported.
- Showlag -v- Mansour (28th October, 1992) Jersey Unreported.

4 Halsbury: 37 : paras 437-43.
: 17 : paras 451-5.
: 8 : paras 759,762.

re Remise de Biens of James Barker (1987-88) JLR 1.

re Remise de Biens of James Barker (1987-88) JLR 4.

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IBL Ltd. -v- Planet Financial Services (1990) JLR 316.

Seale Street Developments -v- Chapman (3rd December, 1992) Jersey
Unreported.

L.G.L. Administrators -v- Rahman (17th September, 1993) Jersey
Unreported.

Ellis -v- Scott (1964) 2 All ER 987.

T.C. Trustees, Ltd. & Anor. -v- J.S. Darwen (Successors) Ltd. (1969) 1
All ER 271.

Scholefield -v- Church Army (1986) 1 WLR 1328.

Channel Islands and International Law Trust Company Ltd. -v- Pike &
ors. (1990) JLR 27.

Ernest Farley & Sons Ltd. -v- Takilla Ltd. (25th February, 1992)
Jersey Unreported.

In re: South American and Mexican Company Ex parte Bank of England
[1895] 1 Ch 37.

Kirch -v- Walcott & Ors. [1929] AC 482.

Kok Hoong -v- Leong Cheung Kweng Ltd. [1964] 1 ALL Er 300.