



Neutral Citation Number: [2024] EWHC 1070 (Ch)

Case No: CR-2023-007112

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST

The Rolls Building
The Royal Courts of Justice
7 Rolls Building, Fetter Lane
London EC4A 1NL

Date: 8th May 2024

Before:
DEPUTY INSOLVENCY AND COMPANIES COURT JUDGE JONES

IN RE A COMPANY

Mr Josh Lewison (instructed by **Mills & Reeve**) for the **Applicant**
Mr William Willson (instructed by **Birketts**) for the **Respondent**

Hearing dates: 12th March 2024

APPROVED JUDGMENT

I direct that pursuant to CPR PD 39A para. 6.1 no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

1. This is an application to restrain presentation of a winding-up petition based on a money judgment obtained in a Lebanese Court (“the Lebanese judgment”).
2. The Applicant was represented by Mr Josh Lewison, Counsel, and the Respondent by Mr William Willson, Counsel. Both Counsel provided careful and helpful skeletons and each also provided an authorities bundle. Mr Willson provided a supplementary skeleton on the morning of the hearing, dealing with the case of *Drelle v Servis-Terminal LLC* [2024] EWHC 521 (Ch) in which

judgment had been handed down the previous day. That judgment is helpful although not determinative of all the issues in this particular matter. I also asked Counsel for submissions on the issue of whether a stay in Lebanon would affect any running of time and for written submissions on the case of *Tasarruf Meyduati Sigorta Fonu v Demirel and another* [2007] EWCA Civ 799.

3. I am grateful to both Counsel for their clear submissions and assistance.

BASIC PRINCIPLES

4. The basic principles of an application for an injunction to restrain presentation of a winding up petition are not in doubt and I bear firmly in mind the principles in *Re Tallington Lakes Ltd v South Kesteven District Council* [2012] EWCA Civ 443, *Argyle Crescent Limited v Definite Finance Co Limited* [2004] EWHC 3422 (Ch) and *Angel Group v. British Gas Trading* [2013] B.C.C. 265. In short, a debt must be disputed on grounds which have substance.
5. My attention was also drawn to **Applications to Wind Up Companies**, 2.166, 7.344-7.345, 7.45, 7.39, 7.257, 7.263, relied upon by Mr Willson, which I have also found useful.
6. I bear in mind that I do not have to make a final determination of the issues but to assess whether or not there is a substantial dispute of a nature of which the result may be that the Lebanese judgment cannot be relied upon to found a winding up petition.
7. The issues were set out differently by each party and evolved somewhat during the hearing. A mild claim that the application was not properly brought effectively dissolved in the light of day, although it may raise its head again in respect of costs.

THE BACKGROUND

8. Judgment in the sum of USD \$776,907.51 was obtained by the Respondent in Lebanon on 13.7.2010. The judgment was upheld by the appellate courts in Lebanon on 20.5.2014 and 23.3.2017 following appeals by the Applicant. There

is evidence in the bundle that some enforcement was attempted in Lebanon by the Respondent without success in around 2015.

9. On 13.7.2022 the Respondent wrote to the Applicant through its London solicitors with a draft statutory demand, stating that it reserved the right to serve a formal demand. The demand was for the judgment sum plus 9% interest from 20.5.2014 to date of payment and for costs.
10. On 6.9.2022, the Applicant caused an unnamed third party that is affiliated to the Applicant and its current agent to make a payment into court in Lebanon by the way of a banker's cheque in the principal sum of USD \$776,907.51. It does not cover any claimed interest or costs. The payment was made as the result of a confidential agreement between the agent, the third party and the Applicant to which the Respondent is not a party.
11. On 21.2.2023 the Respondent filed an objection to the payment with the Enforcement Bureau, seeking rejection of the bank cheque. On 16.10.2023 the Enforcement Bureau adjudged that the payment was invalid as a matter of Lebanese law. The cheque has been deposited in an interest-bearing account at Byblos Bank SAL in Lebanon which I am told is standard procedure. It is my view that I cannot go behind the determination of the Lebanese court as to the validity of the payment in Lebanon.
12. On 20.11.2023 the Respondent again demanded payment and the Applicant provided a full response on 6.12.2023. I am told by the Applicant that it appealed the 16.10.2023 judgment on 22.12.2023 and has applied for a stay of enforcement proceedings as part of the appeal. There is some dispute as to the status of the enforcement processes. I have no first-hand evidence by an expert in Lebanese law to support this assertion.

REASONS FOR RESTRAINING PRESENTATION

13. There are five reasons presented by the Applicant for restraining presentation of a petition:
 - a. That the judgment debt is time-barred;

- b. That it is unclear if there was acknowledgment within the limitation period;
- c. There is a substantial dispute as to whether the judgment debt has been satisfied;
- d. The solvency of the Applicant;
- e. The appropriateness of an injunction.

LIMITATION POINT

- 14. The first judgment was obtained on 13.7.2010. The first appeal was dismissed on 23.5.2014 and the second on 23.3.2017.
- 15. The first question is what limitation regime applies to a foreign judgment, the second is when time started running for any limitation period and the third is whether any action of the Applicants might have caused the limitation period to reset.

What Limitation Regime applies to a foreign judgment?

- 16. There are traditionally two ways in which foreign judgments can be recognised in England & Wales:
 - a. Statutory registration; and
 - b. Common law.
- 17. It is common ground that the Lebanese judgment does not fall into either of the statutory regimes available. It is also common ground that the Lebanese judgment has not undergone the common law conversion to an English judgment by way of a Part 7 claim.

The statutory regime

- 18. The Respondent has sought to draw analogies from, in particular, the Foreign Judgments (Reciprocal Enforcement) Act 1933, (“the 1933 Act”) as a guide for the position under common law. I have also had my attention drawn to case law relating to the Administration of Justice Act 1920 (“the 1920 Act”)

The Administration of Justice Act 1920 (“the 1920 Act”)

19. The 1920 Act relates to certain former dominions and colonies of the United Kingdom. It is limited to specified types of sums of money. It provides for registration of the judgment at the High Court (or Scottish equivalent) within twelve months after judgment (or a longer period if the court agrees). On registration the judgment has the same force and effect of a judgment obtained in the registering court and is controlled by that court. In other words, it becomes for all intents and purposes an English judgment.
20. It appears that foreign judgments registerable under the 1920 Act, but which are not registered, may also be enforced by way of the common law – it does not appear to be specifically precluded.

Foreign Judgments (Reciprocal Enforcement) Act 1933 (“the 1933 Act”)

21. This extends the recognition of foreign judgments to countries not necessarily forming part of the former dominions and colonies (although it does include some of these), but where there is substantial reciprocity of treatment. It is again limited to sums of money and can be registered in the High Court. Registration again gives the same status as an English judgment for all purposes.
22. Although the 1933 Act prescribes that a judgment is deemed final and conclusive and can be registered even if there is a pending appeal, the statutory time limit at s2(1) 1933 Act is six years from the date of judgment or the date of the last judgment if there have been appeals in the original jurisdiction. It is clear that Parliament intentionally built in something of a moving feast to allow all processes in the original jurisdiction to be completed before any final trigger is pulled as to the statutory time limit. S6 of the 1933 Act limits actions outside registration:

“No proceedings for the recovery of a sum payable under a foreign judgment, being a judgment to which this Part of this Act applies, other than proceedings by way of registration of the judgment, shall be entertained by any court in the United Kingdom.”

23. As a result, 1993 Act foreign judgments do not appear to be enforceable at common law, this view being supported by **Dicey, Morris and Collins on the Conflict of Laws @ 14R-2024**.

The Common Law Regime

24. The position under the common law is somewhat different. There is no direct route to recognition of the judgment. The general recognition procedure is that a person with the benefit of the foreign judgment brings a Part 7 claim based on the sums awarded in the foreign judgment. It is, again, only available for money judgments but, as a matter of public policy, not for taxes, fines or penalties.
25. These claims are often known as Recognition Claims, but in fact that is something of a misnomer. The claims do not recognise the foreign judgment *qua* judgment, but as a debt owed. They are often (in fact usually) granted by way of summary judgment as the English courts will not go behind the foreign judgment other than on the same public policy grounds which would give rise to a refusal to register a judgment.
26. The judgment which can then be enforced is the English judgment on the basis of the debt owed by reason of the foreign judgment.
27. Judgments must be final and unalterable in the court which pronounced the judgment to enable a successful conversion to an English judgment. If, however, there are appeals in the original court which are being pursued, the English court will only enforce to the extent that it does not damage the interests of those who have the right to appeal. In that eventuality, it is more than likely that there will be a stay on enforcement [**Dicey @ Rule 16 14-30**].

Status of unregistered/unrecognised foreign Judgment

28. The status of a foreign judgment which has neither been recognised under either of the two relevant Acts nor converted by way of a Part 7 claim and any role it might play in insolvency proceedings had not been closely examined until recently.

29. On 11.3.2024, the day before this hearing, Richards J handed down judgment in the case of *Drelle v Servis-Terminal LLC* [2024] EWHC 521 (Ch). This was an appeal from ICC Judge Burton. She had adjudged Mr Drelle bankrupt on the basis of a Russian judgment which had not been subjected to the Part 7 procedure for conversion to an English judgment. Her decision had been made on the basis that there was no real dispute. The issue of whether the petition could be brought on the basis of an unregistered/unrecognised foreign judgment (“the Petition Debt Point”) had been conceded by Mr Drelle at first instance, but he was granted permission to withdraw those concessions for the purpose of his appeal.
30. The central question was whether an unrecognised foreign judgment met the requirements of s267 of the Insolvency Act 1986 (“IA 1986”) such as to provide the foundation for a creditor’s petition for bankruptcy:

267 Grounds of creditor’s petition.

(1) A creditor’s petition must be in respect of one or more debts owed by the debtor, and the petitioning creditor or each of the petitioning creditors must be a person to whom the debt or (as the case may be) at least one of the debts is owed.

(2) Subject to the next three sections, a creditor’s petition may be presented to the court in respect of a debt or debts only if, at the time the petition is presented—

(a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the bankruptcy level,

(b) the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain, future time, and is unsecured,

(c) the debt, or each of the debts, is a debt which the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay, and

(d) there is no outstanding application to set aside a statutory demand served (under section 268 below) in respect of the debt or any of the debts.

31. Richards J considered Rule 45 in **Dicey & Morris** which states clearly that a foreign judgment has no direct operation in England (although it may be raised as a shield) but also considered Rule 51 which provides that a foreign judgment

which is a final and conclusive on the merits and not impeachable under any of Rules 52 to 55 is conclusive as to any matter thereby adjudicated upon and cannot be otherwise impeached for any error either (1) of fact; or (2) of law.

32. Mr Drelle claimed that the rules effectively precluded any action being brought on the foreign judgment, including presentation of a bankruptcy petition, as this is using it as a sword and not a shield, contrary to Rule 45. He also relied on **Briggs on Private International Law in the English Courts (2nd Ed)** which included a passage stating that to enforce a foreign judgment it must be registered or recognised.
33. Richards J referred to s267 IA 1986 and took the view that the question of what a debt was for the purpose of IA 1986 should be determined by reference to the words of the statute. The judge noted that the judgment was not impeachable under Rule 51 (Dicey) and that there was no question but that Mr Drelle owed the judgment sum.
34. S267, said the judge, does not consider how, or in which courts, any such debt could be enforced. *Bishopsgate Investment Management v Maxwell* (1993) Times 11 February was confirmation that IA 1986 changed the landscape of insolvency proceedings so that a debt no longer needed to result from a final order or judgment. It could be based on trade or other debts to which there was no real defence. Thus, an unrecognised foreign judgment, incontrovertibly owed, is a liquidated sum not subject to a contingency. It satisfies the requirements of s267 IA 1986.
35. At paragraphs 45 & 46 of his judgment, Richards J dealt with the point as to whether a conclusive debt can found a petition even if there is no English/Welsh judgment and it is otherwise “unenforceable”:

“The difficulty with that argument is that s267 requires that there be a “debt” without expressly considering how, or in which courts, any such debt could be enforced. Moreover, authority suggests that an inability presently to take court proceedings to enforce a claim for a liquidated sum does not prevent that claim from constituting a debt. Perhaps the clearest authority is the judgment of Chadwick J in Bishopsgate Investment Management Limited v Maxwell (1993) Times, 11 February. In his judgment, Chadwick J confirmed that the Insolvency Act had changed the law from that previously applicable under the

Bankruptcy Act 1914. Following the Insolvency Act, a “debt” for the purposes of s267 did not need to result from a final order or judgment of an English court. Thus, a trade debt is in principle capable of founding a bankruptcy petition even though, until judgment is obtained on that debt, it will not be possible to “enforce” it.

The “obstacle” on which Mr Drelle relies, namely that ST has only an unrecognised foreign judgment, does not prevent the Judgment constituting a “debt”. It does not alter the conclusion that the Judgment, which is to be taken as final and conclusive for the purposes of Ground 1, requires payment of a liquidated sum that is not subject to any contingency. Rather, the “obstacle” relied upon presents a barrier to enforcement of the Judgment in the particular jurisdiction of England and Wales that is no different in nature to the barrier to enforcement that faces a creditor who has an English trade debt, but no judgment.”

36. Richards J carefully looked at a number of Commonwealth authorities in Re Drelle, and concluded that they correlated to old Acts, with its more limited definition of a debt which could found insolvency proceedings.

37. Richards J also accepted and agreed with the conclusion in Sun Legend Investments v Ho [2013] BPIR 533:

“I also accept the submission that a bankruptcy petition does not constitute enforcement of the Hong Kong judgment. The bankruptcy jurisdiction since 1986 is a separate jurisdiction involving a class remedy”.

38. Winding up petitions are not, of course, bankruptcy petitions. The equivalent provision is s122(1) IA 1986 of which the only relevant provision is s122(1)(f) IA 1986: “the company is unable to pay its debts”. S123 IA 1986 sets out the definition of inability to pay its debts of which ss123(1)(a) (failure to pay statutory demand) and 123(1)(e) (company is unable to pay debts as they fall due) are relevant in this case. The term “Debt” is defined in IR 14.1(3):

“Debt”, in relation to [decision procedures in respect of a moratorium under Part A1 of the Act,]³ winding up and administration, means (subject to the next paragraph) any of the following—

(a) any debt or liability to which the company is subject at the relevant date;

(b) any debt or liability to which the company may become subject after the relevant date by reason of any obligation incurred before that date;

(c) any interest provable as mentioned in rule 14.23

39. It would be perverse for the common term “debt” to be construed differently for the purposes of winding up and bankruptcy. Accordingly, the principles applied in *Re Drelle* apply in this case, and the Lebanese judgment forms a debt for the purposes of winding up without the need for registration or recognition subject to the limitation question.

Limitation

40. The Applicant asserts that s5 Limitation Act 1980 (“the 1980 Act”) applies to this debt. The Respondent says that this is a judgment and that s24(1) of the 1980 Act would apply were this not proceedings under the Insolvency Act 1986 (“1986 Act”), by reason of the decision of the Court of Appeal in *Ridgeway Motors (Isleworth) Ltd v ALTS Ltd* [2005] EWCA Civ 92.

5. Time limit for actions founded on simple contract.

An action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued.

24.— Time limit for actions to enforce judgments.

(1) An action shall not be brought upon any judgment after the expiration of six years from the date on which the judgment became enforceable.

41. “Action” is defined in s38(1) 1980 Act as:

Interpretation

(1) In this Act, unless the context otherwise requires—

- *“action” includes any proceeding in a court of law, including an ecclesiastical court ...*

42. *Ridgeway Motors* concerned a winding up petition based on a judgment debt which was more than six years old. The Company sought to have it dismissed on the basis that s24(1) 1980 precluded an action on a judgment when more than six years had passed. The Court of Appeal, in a wide-ranging and carefully explained judgment, considering the earlier case of *Lowsley v Forbes (trading as LE Design Services)* [1999] 1 AC 329, concluded that the term “action on a judgment” did not apply to bankruptcy or winding up proceedings based on judgment debts. The term applies only to a fresh action to obtain a second judgment based on the first. A winding-up petition is neither designed to re-

establish the liability of the company nor a process of execution of the judgment [@para 29]. As a consequence, s24(1) 1980 Act does not apply in insolvency proceedings.

43. Mummery LJ noted that the 1980 Act contains no provisions relating to the commencement of winding up proceedings and that there is therefore no specific limitation bar. Any limitation has to be drawn by reference to the nature of the debt.
44. Clearly, if a foreign judgment is of the same nature as an English judgment, then s24(1) is disapplied and there are no other limitation issues for the Respondent save for a bar on interest for longer than six years. The Applicant, however, asserts that by reason of the quasi-contractual nature of a foreign judgment, it falls into s5 1980 Act - and relies for support on *Ridgeway* itself. There is obiter discussion in *Ridgeway* of the position of an “ordinary creditor” without a judgment @ 2881 B-C::

(1) Ordinary creditors. This case is not concerned with the position of an ordinary creditor who has not established his debt by a judgment. Section 24(1) does not apply, as there is no judgment on which to bring an action, let alone base a petition. It does not follow, however, that a person owed a debt by a company under a contract is entitled to present a petition after the expiration of six years from the accrual of his cause of action. If the debt is statute-barred at the time of the presentation of the winding up petition, the petitioner is not at that date a creditor of the company and has no standing under section 124 of the Insolvency Act 1986 to present a petition in that capacity: see, for example, the judgments of the majority in the High Court of Australia in Motor Terms Co Pty Ltd v Liberty Insurance Ltd (1967) 116 CLR 177.

45. Is a foreign judgement of the same nature as an English judgment, or the same nature as a simple debt under a contract, or something different entirely?
46. Counsel for the Applicant has brought *Grant v Easton* (1883) 12 QBD 302 to my attention, in particular the passage that states that the liability of the defendant for a debt under a foreign judgment arises from an implied contract. *Grant* was a case involving the recognition of a foreign judgment by way of writ and summary judgment. It was not assessing the nature of a foreign judgment generally nor did it touch on limitation or what limitation might apply. It

predates all modern limitation provisions and insolvency acts, in particular the 1986 Act and its changes to the landscape of insolvency.

47. The same can be said of *In re Flynn No 2* [1969] 2 Ch 403, which re-iterates the contractual nature of the foreign judgment in reliance on *Grant*. *Flynn* contains an analysis of s23(4) of the Limitation Act 1939, dealing with rights of action for debts or other pecuniary claims in the personal estate of a deceased person. It is not directed towards the status of a foreign judgment, but towards the issue of acknowledgement of debts. Again, it does not deal with insolvency and, even if it had, would not have been helpful because of the step-change in IA 1986 described carefully in *Ridgeway* and in *Drelle*.

48. The case of *Van Heeren v Cooper* [2014] EWHC 4797 (Ch) is relied upon for the passage @ para 13:

“a judgment debt is entitled to the same treatment as any other debt is that the liability of a defendant in an action brought on a foreign judgment is an action which proceeds on the basis of an implied contract to pay, on the part of the party, against whom the judgement has been recovered.”

49. On analysis, however, *Van Heeren* does not say that a foreign judgment is subject to s5 of the 1980 Act as a consequence of its asserted nature as an implied contract. It concerns New Zealand judgments which were used as the basis for statutory demands. These were set aside by the District Judge and a Part 7 claim was brought under the common law to claim the amounts under the foreign judgments. There was then an appeal against the District Judge’s order setting aside the statutory demands, which was listed to be heard with the Part 7 claim. The basis on which the District Judge had set aside the statutory demands was that the effect of s24(1) of the 1980 Act was to render the debts unenforceable and non-provable because they were time-barred.

50. The critical issue for the court in *Van Heeren* was whether s29(5) of the 1980 Act extended to s24(1) of the 1980 Act by reason of acknowledgement of the debt. The District Judge had held that it did not. The Defendant asserted this on the basis that s29(5) of the 1980 Act did not apply to claims on a judgment that had already established the liability as opposed to a claim in simple contract where liability had not been established.

51. In Van Heeren, the judge found that s29(5) of the 1980 Act applied both to ordinary contract claims and judgment debts. Nowhere in that judgment is there any statement or finding that s5 of the 1980 Act applies to foreign judgments for the purposes of limitation. On the contrary, the judgment is focussed on the interaction between s24(1) and s29(5) of the 1980 Act. That analysis would not have been necessary if the court had taken the view that s5 applied to the foreign judgment because it has never been in doubt that s29(5) applies to s5 of the 1980 Act.
52. Jamal v Christiansen [2016] EWHC 2261 (Ch) relies on a number of authorities which are said to found the notion that a foreign judgment is a debt in simple contract. The very old case of Dupleix v De Roven [1705] 23 ER 950 is quoted, together with Grant, Re Flynn and Van Heeren. The parties in Jamal appear to have proceeded on the unargued basis that s5 of the 1980 Act applied, despite the fact that the section (or its precursors) is not directly mentioned as being applicable in any of the cases relied upon, and that upon proper analysis of Van Heeren it is clear that the court had s24(1) in contemplation rather than s5 of the 1980 Act.
53. In Jamal, the main focus of the court was on the unenforceability of a foreign judgment. The judgment appears to confuse the limitation provisions of the 1933 Act with those of a judgment not registrable under the 1933 Act. Chitty on Contracts [32nd Edition paras 28-16] was quoted:

“A foreign judgment of a court of competent jurisdiction gives rise to an implied contract to pay the amount of the judgment, and the six-year period for actions founded on simple contract applies to an action upon such a judgment.”

There are references to a number of authorities, going back to Dupleix v De Roven [1705] 23 ER 950, where it was said:

“If a man recovers a judgment or sentence in France for money due to him, the debt must be considered here only as a debt on simple contract, and the statute of limitations will run upon it.”

54. Dupleix v De Roven also states:

“It is plausible and reasonable, that the statute of limitations should not take place, nor the six years be running, until the parties come within the cognizance of the laws of England; but that must be left to the legislature.”

55. The judgment is fragmentary and unreasoned. It is the judgment of a single judge. It is by no means definitive of the status of a foreign judgment in 2024 given the progress of English law, international law and diplomacy in the intervening 300 years.
56. Neither Van Heeren nor Jamal made any reference to Tasarruf Mevduati Sigorta Fonu v Demirel and another [2007] EWCA Civ 799. In that case, the Court of Appeal, which heard arguments from both sides, proceeded throughout on the assumption that s24 1980 Act applied to foreign judgments [@ para 41].

41 The present position is that TMSF has a valid Turkish judgment in a large sum against Mr Demirel. The judgment is dated 20 November 2001 and we infer that it became enforceable at about that time. By section 24 of the Limitation Act 1980 an action shall not be brought after the expiration of six years from the date on which the judgment became enforceable. Thus an action to enforce the judgment will be time-barred in England in late 2007 or perhaps early 2008. If this appeal is allowed no action can be brought in the future because it will be time-barred and Mr Demirel will be able to bring funds to London free of a risk of execution. It is common ground that, if this appeal succeeds, the proceedings will be set aside. The continued existence of the action seems to me to be of potential benefit to TMSF.

57. It is clear that Fonu involved an action on a judgment, so the six year limitation period in 24(1) of 1980 Act would be effective. The important point is that it was simply not in dispute that s24(1) of the 1980 Act was the correct category in which to place a foreign judgment.
58. There is a conflict between Jamal and Fonu. One takes it for granted that s5 of the 1980 Act applies, the other that s24(1) of the 1980 Act applies. Although neither grapples with the underlying reasons for applicability, both decisions are potentially binding on this court [Coral Reef Ltd v Silverbond Enterprises Ltd and another [2016] EWHC 3844 (Ch) [2018] 4 WLR 104] as is Dupleix v De Roven.
59. It seems to me that, in the absence of any other assistance from previous decisions, I am bound to follow the Court of Appeal rather than the High Court.

There is another factor which I consider to be important and that is the nature of the debt created by a foreign judgment as opposed to a contractual debt.

60. In *Lenkor Energy Trading DMCC v Puri* [2021] EWCA Civ 770, the Court of Appeal stated that a foreign judgment is unimpeachable in the absence of contrary public policy grounds. At para 40, the court stated:

“There are sound justifications for taking a different approach to substantive claims and enforcement claims, reflecting the different role performed by the court in each circumstance: RBRG Trading (UK) Ltd v Sinocore International Co Ltd [2018] EWCA Civ 838; [2018] 1 CLC 874 [26](3). The judgment of a foreign court of competent jurisdiction creates an obligation to pay the judgment sum enforceable in this jurisdiction as a debt, irrespective of the underlying cause of action: Williams v Jones (1845) 13 M & W 628, 633; Adams v Cape Industries plc [1990] Ch 433.

61. The Court of Appeal in that case did not find that that the obligation to pay arose out of a fictional contract as a substantive claim, but as an obligation giving rise to an enforcement claim.
62. S5 of the 1980 Act does not specifically state that it applies to foreign judgments as one might expect. It applies only to simple contracts. A simple contract is not, in its essential nature, unimpeachable save on public policy grounds. A foreign judgment (subject only to the competence of the foreign court) is unimpeachable. The debts are of a very different nature. In my view, despite the sometimes ancient and largely *obiter* comments regarding the nature of a foreign judgment, it cannot be equated with a simple contract. It may be a fictional quasi-contract for the purpose of bringing an action on a foreign judgment, although even that seems dubious, but it is not a simple contract for the purposes of the 1980 Act.
63. Does it, then, equate to an English/Welsh judgment or is it of a nature which is itself *sui generis*? Certainly, the references to s24 of the 1980 Act in some of the authorities seem to point to a foreign judgment being of the same nature as an English/Welsh judgment for the purposes of limitation. There is no indication in the 1980 Act that the words “action on a judgment” are limited to English/Welsh judgments and no indication that the analysis in *Ridgeway*,

tracing the evolution of the term “action on a judgment” is disapplied for a foreign judgment.

64. If one takes *Ridgeway*, *Fonu* and *Re Drelle* together the result is:
- a. An unregistered/unrecognised foreign judgment is final and conclusive and amounts to a debt for the purposes of IA 1986;
 - b. A foreign judgment falls into the same category as an English/Welsh judgment for the purposes of limitation and not into the same category as a simple contract;
 - c. That category is s24 of the 1980 Act.
 - d. Insolvency proceedings are not an “action on a judgment” and s24(1) of the 1980 Act has no effect;
 - e. There is no statutory limitation period to be applied to a petition based on a judgment and no limitation in common law.
65. Does this mean that a foreign judgment which cannot be registered has a greater advantage than a registered foreign judgment?
66. A 1920 Act judgment must be registered within twelve months of its handing down [s1] but will not be registered if the debtor satisfies the court that an appeal is pending or that he is entitled and intends to appeal the judgment. If the judgment is not registered, it may still be enforced by way of common law and would be treated in the same way as the Lebanese judgment. If registered, it is treated as an English/Welsh judgment, subject to 24(1) of the 1980 Act but, so far as bringing insolvency proceedings, is governed by the decision in *Ridgeway* that the 1980 Act does not apply at all.
67. A 1933 Act judgment must be registered within six years of the handing down of the judgment or, where there have been appeals, six years after the final judgment is given. Registration can be set aside or suspended if there is a genuine appeal on foot [s5(1)] and a further application can be made following an appeal [s5(2)]. Thereafter, it is treated as an English/Welsh Judgment [s2(2)].

There is reference in commentaries to there then being a further six year limitation period, but this is not contained in the 1933 Act itself and there is nothing in the 1980 Act which distinguishes it from other judgments. Again, therefore, a 1933 Act judgment on which a petition is founded is not subject to s24(1) of the 1980 Act in insolvency proceedings by reason of *Ridgeway*.

68. A question that has troubled me is that the 1933 Act does not allow proceedings for the recovery of sums payable on judgments subject to the Act to be pursued **other** than by way of registration. This would seem at first blush to put 1933 Act foreign judgments at a disadvantage in comparison with non-registerable judgments but I have concluded that, in fact, it is likely that a 1933 Act foreign judgment would be caught by the decision in *Drelle*, as a petition does not amount to being “proceedings for recovery” and as set out by Richards J at paragraph 35 above.
69. In any event, the 1933 Act predates the changes to the insolvency regime in 1986 and, if there is any unintended disadvantage as a result, it is for Parliament to enact the appropriate changes to the legislation.
70. It is my finding that the Applicant does not have a limitation defence to a winding-up petition.

ACKNOWLEDGEMENT

71. In the event that I am mistaken as to the inapplicability of the 1980 Act, I turn to consider when limitation would have commenced and whether there has been any action by the Respondent that would amount to acknowledgement starting time running again.
72. The original judgment was in 2010. Does a limitation period of six years [under s5 or s24(1) 1980 Act] start to run then, or is it extended by reason of the Lebanese appeals concluded on 20.5.2014 and/or 23.3.2017?
73. Certainly it is the case that under the 1933 Act a judgment is deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court [s1(3) 1933 Act], but it is also the case that the time limit for registration is six

years after the date of the **last** affirming judgment. The 1920 Act is a little less clear, but also makes provision for appeals to be taken into consideration. Both Acts are self-contained when it comes to limitation and not subject to the 1980 Act until registered.

74. Does an appeal, therefore, set time running again? There is no doubt that a successful appeal results in the expunging of the original judgment so that, notwithstanding its original status as being final and conclusive, it can no longer be effective in this jurisdiction. It is my view that, whilst the making of an appeal is not an acknowledgement of the judgment debt by the debtor, the loss of such an appeal has the effect of affirming and re-stating the original judgment such that any applicable limitation period re-commences. This view is supported by Parliament, in the 1933 Act and (impliedly) in the 1920 Act and is practical in that it would prevent time running out before the appeals processes in the foreign jurisdiction were exhausted, in the event of extreme delay in that jurisdiction.
75. That being the case, the final appeal was determined on 23.3.2017 and time should be calculated from that point. The limitation period *prima facie* expired on 23.3.2023.
76. On 6.9.2022, the Applicant, through its agent caused the third party to make a payment of the principal sum into court in Lebanon. As I set out at paragraph 10 and 11, it was rejected by the court, but the issue with which I am concerned at present is whether this amounts to acknowledgment of the judgment debt, thus recommencing the running of any limitation period.
77. In *Van Heeren*, above @ paragraph 48, there was consideration of whether s29(5) of the 1980 Act applies to foreign judgments. This provides that:
- 29(5) Subject to subsection (6) below, where any right of action has accrued to recover—*
- (a) any debt or other liquidated pecuniary claim; or*
- (b) any claim to the personal estate of a deceased person or to any share or interest in any such estate;*

and the person liable or accountable for the claim acknowledges the claim or makes any payment in respect of it the right shall be treated as having accrued on and not before the date of the acknowledgment or payment.

(6) A payment of a part of the rent or interest due at any time shall not extend the period for claiming the remainder then due, but any payment of interest shall be treated as a payment in respect of the principal debt.

78. The effectiveness of the acknowledgement is covered in the 1980 Act s30:

30.— Formal provisions as to acknowledgments and part payments.

(1) To be effective for the purposes of [section 29](#) of this Act, an acknowledgment must be in writing and signed by the person making it.

(2) For the purposes of section 29, any acknowledgment or payment—

(a) may be made by the agent of the person by whom it is required to be made under that section; and

(b) shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is being made.

79. Does the payment into court satisfy the provisions of s30? It is a payment which the Applicant says was made to settle or satisfy the judgment debt. It was made by an affiliate company, apparently pursuant to an earlier undertaking by the agent to the Applicant to pay the judgment debt. It is my view that in doing so, the payment was made by someone acting as an agent for the Applicant. Does the payment to the Enforcement Bureau act as an attempted payment to an agent of the Respondent? The Enforcement Bureau would, if valid, have provided a further cheque to the Respondent and the payment into court is an unequivocal act by the Applicant to an entity which can only pay the sum onto the Respondent.

80. The Applicant itself says that it is a payment intended to satisfy the debt. The cheque itself is an acknowledgement, in writing and signed by an agent. Whether the payment itself is valid does not matter for the purpose of acknowledgement. It would, in my view, do violence to the intention of Parliament if this attempted payment were not a clear acknowledgement of the judgment debt.

81. Even if the 1980 Act applies, the Applicant has acknowledged this judgment debt through its agents. It was acknowledged within the six years running from the final judgment on 23.3.2017 affirming the money owed and was an acknowledgement within the relevant limitation period [whether s5 or s24(1)]. Time restarted at the time of payment and the debt can therefore be enforced.

SATISFACTION

82. The payment has been rejected as being satisfactory by Judge Rana Akoum of the Enforcement Bureau following objection by the Respondent. I cannot go behind that judgment, which is a matter of Lebanese law. The Applicant says that it has filed an appeal against the the decision, apparently on or around 22.12.2023, but has not provided any update on the position in Lebanon.
83. At present, therefore, there is no question of the judgment having been satisfied, the decision of the Enforcement Bureau being in the position of a final judgment. I do not, at this stage, need to deal with the question of whether the payment, which does not cover interest or costs, would be a full discharge in any event. I dealt with a possible future need to assess and deal with those issues at the end of this judgment.

STAY

84. Counsel, at my request, provided me with helpful written submissions on the question of whether a stay in Lebanon would result in time being suspended in this jurisdiction. Mr Lewison took me through the differences between a stay of judgment and of execution, in reliance on *Colt Industries v Sarlie* (No 2) [1966] 1 WLR 1287 and other authorities, whilst Mr Willson focussed on a lack of distinction between the two.
85. On closer analysis, it seems to me that the issue does not need to be decided as there is no indication of a formal stay in Lebanon, other than that imposed in April 2023 for the purposes of allowing a decision on the effectiveness of the attempt to pay the judgment debt in Lebanon, which does not affect the running of any limitation period which might apply. Any stay in connection with an appeal would, in my view, be wrapped up in the decision of the appeal court

wherein time resets if the appeal is dismissed. It is likely that a stay in a foreign court, being procedural, would not, in and of itself, stop time running in this jurisdiction. That is, however, an argument for another day.

ABUSE OF PROCESS

86. There have been indications from the Respondent that it considers that this application is an abuse of process, particularly given the haste with which it was brought and in the absence of a formal statutory demand. I have read the relevant correspondence and considered the timings.
87. There was a short flurry of correspondence commencing in June 2022. A draft statutory demand was delivered to the Applicant. The Applicant responded on 30.6.2022 stating that it did not accept that the Lebanese judgment gave rise to an enforceable debt in England. A further detailed letter was sent on 19.7.2022 setting out the Applicant's objections to the Lebanese judgment. The Respondent replied to the 30.6.2022 letter on the same day, 19.7.2022 and then a response to the 19.7.2022 letter on 3.8.2022.
88. The Applicant responded on 23.8.2022 setting out its position in respect of the Lebanese judgment debt and English law at some length, with the Respondent replying on 14.9.2022 setting out its position, also at some length and repeating a request for payment.
89. On 23.9.2022 the Applicant informed the Respondent that a payment had been deposited by way of banker's check "in connection with the judgment debt". I pause to say that this looks very much like a direct open acknowledgement of the debt in writing and is within a six year window from the date of the last Lebanese judgment.
90. The Respondent replied on 1.10.2022, setting out the currency crisis in Lebanon, the loss of value of the currency and the closing of Lebanese banks on the grounds of security and the failure to state how much had allegedly been paid. On 12.10.2022 the Applicant wrote to say that the judgment debt had been paid in dollars. There was a further lengthy reply on 25.11.2022 by the Respondent which did not take things forward very much, but which repeated the request for

payment. The Applicant responded on 15.12.2022 repeating its assertion that the debt had been paid in Lebanon, and expressed its a refusal to make any further payment.

91. There was no further correspondence at that stage. The Respondent objected to the lodging of the cheque on the grounds that any payment was inadequate and unacceptable and things went quiet as this made its way through the Lebanese system.
92. It appears that there was some form of stay placed on enforcement in Lebanon in April 2023 which came to an end when the Lebanese Court determined the objection.
93. The decision of the Lebanese Court that the payment in Lebanon was not acceptable was handed down on 16.10.2023. The Respondent wrote on 20.11.2023 enclosing a free translation of the 16.10.2023 judgment and seeking payment. The Applicant responded on 22.11.2023 expressing surprise and saying that it would take appropriate steps to restrain presentation. On 29.11.2023 the Respondent wrote back, providing a formal translation of the 16.10.2023 judgment, pointing out that the hiatus had been occasioned by the need to deal with the banker's cheque payment and giving a shortened deadline to comply with payments. On 6.12.2023 the Applicant responded by stating that the cheque had been provided and that the time for appeal had not passed. A number of other challenges were posited, including jurisdictional challenges, but these were not raised in this application. The Applicant sought an undertaking that no statutory demand or petition would be presented by 13.12.2023, in default of which this application would be made.
94. The application was made on 18.12.2023, at which time there had been no response from the Respondent. The Respondent reacted to this and, after further correspondence, the parties agreed to adjourn the hearing originally listed in December 2023.
95. The position of the Respondent is that there is no statutory demand and therefore no need for an application. In fact, there is no necessity for a statutory demand before issuing a winding-up petition and there had been some significant and

fairly aggressive assertions of the existence of the Lebanese judgment debt. The lack of response to the letter dated 13.12.2023, whilst apparently not deliberate, would reasonably cause concern, particularly given the difficulties of getting into Court during the Christmas Vacation.

96. Although possibly a little precipitate, it seems to me that getting the arguments before the court was inevitable and that there would have been little point in continuing with what had become a sterile and repetitive argument. Neither side was going to concede its points. The bringing of this application is not an abuse of process.

CONCLUSION

97. There is no substantial dispute of a nature which requires evidence or hearing. There is no limitation defence available to the Applicant for the reasons set out above. There is no necessity to obtain an English judgment to found a winding up Petition. The debt is incontrovertibly owed. There has not been satisfaction of the debt. The failure to pay the debt is of itself an act of insolvency, so the underlying solvency of the Applicant is not relevant to my considerations.
98. The possibility of the appeal in Lebanon against the refusal of the court to accept that the payment is valid being successful is, however, just about a live issue. There is no real information relating to the appeal. If it fails, then there is simply no reason to grant an injunction. There is a debt clearly due and it has not been paid. If it succeeds, there remain issues about interest and costs which have not been paid and which may be sufficient on their own to allow a petition to move forward.
99. I have not heard full arguments on the issue of interest and costs because it was not necessary for the purposes of this judgment, but in the event that the Lebanese courts accept the payment of the principle sum as valid, then those two issues become important. I will hear submissions as to whether there should be an interim time-limited injunction or undertaking (if offered) to allow for information about the appeal to be provided and for the listing of a further hearing to consider the right of the Respondent to interest or costs of previous proceedings (if necessary).

100. I will also hear submissions on the issue of costs, although I take the preliminary view that I should also adjourn the issue of costs of this application to a further hearing as the determination of costs is likely to be influenced by the determination as to whether or not there has been payment of the principal sum. I will also extend time for permission to appeal to three weeks after the adjourned hearing although an application for permission to appeal on the principles of this judgment may, of course, be made at any time prior to that date.

DEPUTY INSOLVENCY AND COMPANIES COURT JUDGE JONES

8th May 2024

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<u>Grant v Easton</u> (1883) 12 QBD 302	12
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