

Dianne Margaret Quinn

Appellant

v.

Pres-T-Con Limited

Respondents

FROM

THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

REASONS FOR DECISION OF THE LORDS OF THE
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL OF THE
16TH JULY 1986, DELIVERED THE 21ST AUGUST 1986

Present at the Hearing:

LORD BRANDON OF OAKBROOK

LORD TEMPLEMAN

LORD GRIFFITHS

LORD OLIVER OF AYLERTON

LORD GOFF OF CHIEVELEY

[Delivered by Lord Brandon of Oakbrook]

This appeal was heard on 16th July 1986. At the conclusion of the hearing their Lordships stated that the appeal was allowed and that they would give their reasons later. This they now do.

The appellant is the widow and sole administratrix of the estate of Frank Quinn ("the deceased") who died as the result of an industrial accident on 23rd August 1971 at Matura in Trinidad. At the time of the accident the deceased was employed by the Marconi Company Limited, an English company ("Marconi"), and his death was caused by his being struck by the boom of a crane which belonged to the respondents, a company registered in Trinidad, from whom the crane had been hired by Marconi.

On 8th March 1973 the appellant began an action in the High Court in England against Marconi as first defendants and the respondents as second defendants. In that action she claimed, first, damages for herself and her two dependent children under the Fatal Accidents Acts 1846 to 1959, and, secondly, damages for the deceased's estate under the Law Reform (Miscellaneous Provisions) Act 1934. The

appellant was given leave to serve notice of the writ on the respondents out of the jurisdiction in Trinidad under R.S.C. Order 11, and a subsequent application by the respondents to have such service set aside was dismissed. The action was tried by Phillips J. between 14th and 22nd October 1975, judgment being given on the latter date. By that judgment ("the English judgment") the respondents were ordered to pay to the appellant, first, total damages of £36,474.50 including interest, and, secondly, her costs of the action including all costs incurred by reason of there having been two defendants and all costs which the appellant might have to pay to Marconi. The judgment further apportioned the total damages between the appellant and each of her dependent children. Later, on 29th June 1976, the costs awarded to the appellant were taxed and allowed at £3,521.37 and this figure was inserted in the English judgment.

On 27th October 1976 solicitors in Trinidad, on instructions from the appellant's solicitors in England, applied *ex parte* to Cross J., a judge of the High Court of Justice of Trinidad and Tobago, for an order giving leave to register the English judgment in that court with a view to enforcing it there. The application was supported by an affidavit of a solicitor, Mr. Hosein, to which was annexed a certified copy of the English judgment. Cross J. heard the application on 9th November 1976 and made the order asked for, giving the respondents liberty to apply to set aside the registration within 14 days of service of the order on them. On 15th December 1976, within the period so allowed, the respondents applied by summons to set aside the registration. The application was supported by an affidavit of Mr. Collier, a solicitor, in which various grounds for setting aside were put forward. A further affidavit of Mr. Hosein was filed in reply. For reasons which were not explained to their Lordships, there was great delay in the disposal of the application to set aside. It was heard by Warner J., another judge of the High Court, on various dates in November 1979 and January and February 1980. On 8th February 1980 Warner J. gave a decision refusing to set aside the registration. The respondents appealed from the decision of Warner J. to the Court of Appeal of Trinidad and Tobago, and on 29th July 1985 that court (Kelsick C.J. and Bernard and Persaud JJ.A.) gave a reserved judgment allowing the appeal and setting aside the order of Cross J. From that judgment the appellant has now brought this further appeal, with the leave of the Court of Appeal, to their Lordships' Board.

While the respondents relied before Warner J. on various grounds for setting aside the registration, only one of these grounds now remains in issue. That

ground is that the English judgment was dated 22nd October 1975; that the application for its registration was not made until 27th October 1976, that is to say twelve months and five days later; that the Ordinance governing applications for registration prescribed a basic time limit of twelve months for such an application; that, while Cross J. had power under the Ordinance to extend the period if asked to do so, he had not been so asked and had not therefore granted any such extension; and that, in these circumstances, Cross J. had no jurisdiction to make the order allowing the registration which he did make.

It was common ground between the parties that the right to have an English judgment registered in, and thereafter enforced by, the High Court of Trinidad and Tobago was at the material time derived from the Judgments Extension Ordinance Ch. 5 No. 9 ("the Ordinance"), the commencement date of which was 1st April 1922. The Ordinance provides:-

"3. Where a judgment has been obtained in a superior court in the United Kingdom, the judgment creditor, on production of a certified copy of the judgment, may apply to the Supreme 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 Court, and on any such application the Court may, if in all the circumstances of the case it thinks it just and convenient that the judgment should be enforced in the Colony, and subject to the provisions of this Ordinance, order the judgment to be registered accordingly."

Section 4, which follows, contains a list of six specified circumstances in which the registration of a judgment under the Ordinance is expressly forbidden. It is not now contended by the respondents that any of these circumstances exist in the present case.

The Ordinance continues:-

"5. Where a judgment is registered under this Ordinance -

- (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 registering court;
- (b) the registering 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 Ordinance;

(c) ..."

Section 8(1) confers on the Chief Justice power, with the concurrence of a Puisne Judge, to make comprehensive rules of court to govern the procedure to be followed in any proceedings taken pursuant to the Ordinance. Rules so made are contained in R.S.C. Order 71 of Trinidad and Tobago. Rule 1 of Order 71 provides that the powers conferred by the Ordinance may be exercised by a Judge in Chambers. Rule 2 provides that an application for registration of a judgment may be made *ex parte*. Rule 3 provides that an application for registration must be supported by an affidavit; that such affidavit must deal with a variety of matters specified in the rule; and that there must be annexed to it the judgment sought to be registered or an authenticated copy of it. Rule 5 provides that the order giving leave to register a judgment must be drawn up by or on behalf of the judgment creditor, and that every such order shall state the period within which an application may be made to set aside the registration and contain a notification that execution on the judgment will not issue until after the expiration of that period. Rule 7 provides that notice of the registration of a judgment must be served on the judgment debtor and that such notice must state, among other things, full particulars of the judgment registered, the right of the judgment debtor to apply to have the registration set aside, and the period within which an application to set aside may be made. Rule 9 provides that an application to set aside the registration of a judgment must be supported by an affidavit, and that the Court hearing such application may set aside the registration where it is satisfied either (1) that registration of the judgment is forbidden by section 4 of the Ordinance, or (2) that it is not just and convenient that the judgment should be enforced in the territory of Trinidad and Tobago, or (3) that there is some other sufficient reason for setting aside.

Although section 3 of the Ordinance set out earlier provides for an application for registration to be made "within twelve months after the date of the judgment, or such longer period as may be allowed by the Court", and although the various rules of Order 71, to parts only of which their Lordships have referred, are extremely comprehensive in character, it is to be observed that Order 71 contains no rule prescribing any procedure for the making by a judgment creditor of an application to the court to allow an application for registration to be made

after the expiry of a longer period than twelve months from the date of the judgment sought to be registered. The absence of any such rule, when every other aspect of the procedure for implementing the Ordinance appears to be covered, is, in their Lordships' view, a matter of some significance to which they will refer later.

The respondents' contention that the order of Cross J. should be set aside on the ground that the application for registration was five days late, and no extension of time had been expressly asked for or allowed, was dealt with by Warner J. in his judgment of 8th February 1980. He said that the affidavit of Mr. Hosein with a certified copy of the English judgment annexed to it, which was before Cross J. when he heard the application for registration on 9th November 1976, must have made it apparent to that judge that the application had not been made within twelve months of the date of the judgment but five days after the expiry of that period. He took the view that, where a court has power to allow an extension of time for the doing of any act, the allowance of such extension need not in all cases be expressed, but may reasonably be implied from the fact that the court has made an order which, unless it had allowed an extension, it could not lawfully have made. He described this approach as being consistent with what he called "the presumption of regularity". On this basis he held that Cross J., in making his order for registration of a judgment on material which clearly showed that a period greater than twelve months had elapsed from the date of such judgment to the date of the application for registration, must be presumed to have exercised the power given to him by section 3 of the Ordinance to allow the extension of time of five days which was necessary, and that this presumption arising from the making of his order had not in any way been rebutted. In the alternative, he held that, if a formal application to extend time should have been made, and the grant of such extension should have been recorded expressly in the order, the failure to do either of these things amounted to no more than a procedural irregularity and did not therefore invalidate the order.

Persaud J.A., with whose judgment both the other members of the Court of Appeal agreed, took a different view. He said at p. 98 of the record:-

"... I fail to see how it could be said that in ordering the registration of the judgment, Cross J. had impliedly extended the time. I have come to this conclusion, if I may say so, with a great deal of regret, having regard to the circumstances of this case, but I regard the court's function is to apply the law as I see it

regardless of the consequences. Where a procedure is prescribed by law, that procedure must be followed, and even though the court has an inherent jurisdiction to waive non-compliance in a suitable situation, such waiver will not be exercised save in exceptional circumstances and for good reason. In my judgment, there do not appear in the instant case to be exceptional circumstances or good reason."

In their Lordships' view, it is not necessary to decide the question whether Cross J., by making his order of 9th November 1976, must be taken to have exercised the power, which he unquestionably had under section 3 of the Ordinance, to allow an extension of time of five days for the making of the application for registration. If it were necessary, however, their Lordships would prefer the reasoning and conclusion of Warner J. on the question to the reasoning and conclusion of the Court of Appeal.

The reason why it is not necessary to consider whether Cross J. must be taken to have exercised his power to allow an extension of time is this. The original application for registration was made *ex parte* in accordance with Order 71, rule 2, and at that stage Cross J. could only deal with it on an *ex parte* basis. When the respondents applied to set aside the registration under Order 71, rule 9, the matter came before Warner J. on an *inter partes* basis, and he had power, in the light of the further evidence and submissions for the respondents which were before him, to exercise his own discretion afresh as to whether, the objection that the application was late having been raised before him, it was just to allow an extension of five days for the making of the application for registration or not. There was no evidence to show that the expiry of the extra five days had caused, or could conceivably have caused, any prejudice of any kind to the respondents. That being so, the only way in which Warner J. could properly have exercised his discretion was by allowing the appellant the extra five days. Any decision by him not to do so would, in the circumstances of the case, have been plainly wrong.

Much argument was directed, both before their Lordships and in the courts below, to two matters. The first matter was whether it was necessary for a party applying for registration of a judgment after the expiry of twelve months from its date, to make a formal application to the court for whatever extension of time might be needed. The second matter was whether, if a judge allowed an extension of time, such allowance should be expressed in his formal order. In their Lordships' view, neither of these formalities are necessary, because there is nothing

in Order 71 requiring them to be observed. Order 71 could easily have prescribed such formalities, but, significantly in their Lordships' view, it wholly omitted to do so. Nevertheless their Lordships are of the opinion that, as a matter of good practice, where an extension of time is needed, it would be better for the applicant for registration to make an express application to the judge for such extension, and, if the judge allows the extension, for the fact of his having done so to be expressly recorded in his formal order. The following of such a practice would obviate the kind of difficulty which has caused so much trouble in this case. Alternatively, consideration could be given to amending Order 71 so as to prescribe the procedure to be followed in relation to these two matters.

It was for the reasons set out above that their Lordships stated on 16th July 1986 that the appeal was allowed. The result of allowing the appeal is that the order of the Court of Appeal of 29th July 1985 is set aside, the order of Warner J. of 8th February 1980 is restored, and the order of Cross J. of 9th November 1976 stands. The respondents must pay the appellant's costs before the Board and in the two courts below.

