Neutral Citation Number: [2020] EWCA Civ 1604

Case No: A2/2020/0774

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT
QUEEN'S BENCH DIVISION
Mrs Justice Carr
[2020] EWHC 362 (QB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/11/2020

Before:

LORD JUSTICE DAVID RICHARDS
LORD JUSTICE MALES
and
LADY JUSTICE ELISABETH LAING

- -

Between:

STRATEGIC TECHNOLOGIES PTE LTD	**Respondent**
- and -	
PROCUREMENT BUREAU OF THE REPUBLIC OF CHINA MINISTRY OF NATIONAL DEFENCE	**Appellant**

- -
- -

Andrew Onslow QC & Clarissa Jones (instructed by **Dechert LLP**) for the **Appellant**
Hashim Reza (instructed by **Bower Cotton Hamilton LLP**) for the **Respondent**

Hearing date: Tuesday 10th November 2020

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be on Monday 30th November 2020 at 10.30 a.m.

Lord Justice Males:

1. A claimant obtains a money judgment in the courts of a Commonwealth state which it then seeks to enforce by a common law action on the judgment in a second Commonwealth state. The issue arising on this appeal is whether the judgment thus obtained in the second Commonwealth state ("a judgment on a judgment") can be registered for enforcement here pursuant to the Administration of Justice Act 1920 ("the 1920 Act").

2. That issue has never been decided, although it has been debated in academic writings, with a consensus that the answer should be No. In this case, however, Carr J held that the answer is Yes.

The facts

3. The facts can be stated shortly, omitting those relevant only to issues decided below but which do not arise on appeal.

4. By a contract between the parties dated 1st May 1996 the respondent ("ST") agreed to supply a measuring system to an underground firing range in Taiwan to the appellant, the Procurement Bureau of the Ministry of National Defence of the Republic of China, more commonly known as Taiwan ("the MND"). The contract was governed by the law of Taiwan and provided for arbitration in Taipei.

5. In due course a dispute arose and ST commenced proceedings in Singapore in May 1998. Those proceedings were initially to restrain the MND from seeking payment under a performance bond issued by the Development Bank of Singapore, but were subsequently extended to include ST's substantive claims for damages under the contract.

6. On 7th August 1998 the MND sought a stay of the proceedings pending arbitration, alternatively on the ground of *forum non conveniens*. On 27th October 1998 the Singapore High Court acceded to the MND's application for a stay in favour of arbitration (but not on *forum non conveniens* grounds). However, for reasons which have never been explained, the MND then declined to arbitrate. As a result the stay of the Singapore proceedings was lifted on 12th May 1999 and the action proceeded, although the MND took no further part in it. Judgment in default of defence was entered on 30th August 1999 and was served on the MND on 6th December 1999. In 2002 ST restored the proceedings for an assessment of damages. The MND was served with all directions for the assessment hearing and was given the opportunity to participate, but again chose not to engage. An award of damages in the sum of S$10,693.00 and US $1,573.510.40 plus fixed costs of S$7,000 was made on 10th December 2002 – the Singapore judgment.

7. The judge held that despite its very limited engagement in the Singapore proceedings, the MND had nevertheless submitted to the jurisdiction of the Singapore court. The MND has been refused permission to challenge that finding and we must therefore proceed on the basis that it is correct.

8. In 2003 ST commenced proceedings to register the Singapore judgment in England pursuant to the 1920 Act. Service on the MND was effected through the Foreign and

Commonwealth Office on 17th June 2004 and permission for registration was granted on 16th December 2004. On 24th October 2005 ST obtained an interim third-party debt order based upon this English judgment but, also for reasons which have not been explained, took no further step to enforce this judgment or the debt order. ST does not rely on this registration in the current proceedings.

9. On 28th December 2008 ST sought a freezing order over an account held in the Cayman Islands in which the MND claimed an interest (the MND had brought proceedings against third parties, referred to as "the Wang proceedings", seeking the recovery of funds allegedly misappropriated). On the following day ST commenced a common law action on the Singapore judgment. The freezing order was granted on 30th December 2008 and was extended on 27th February 2009. The proceedings were served on the MND on 27th March 2009 but the MND did not acknowledge service.

10. On 25th June 2009, on an application by ST, the Grand Court of the Cayman Islands entered a default judgment in sums totalling US $1,573.510.40 (plus interest) and S$10,693 (plus interest) – the Cayman judgment.

11. Pausing there, it seems clear that the MND had not at that stage submitted to the jurisdiction of the Cayman Islands court, but Carr J found that it did so subsequently as a result of further steps taken in connection with a charging order obtained by ST over funds held in court as a result of the Wang proceedings. Those steps led ultimately to a Consent Order dated 16th May 2014 which acknowledged that a total of US $3,523,198.00 and S$28,240.90 was now due pursuant to the Cayman judgment, inclusive of interest and costs.

12. The MND sought permission to appeal against the finding that it had submitted to the jurisdiction of the Cayman Islands court, but was refused permission to do so. Again, therefore, we must proceed on the basis that the finding was correct.

13. In the event the MND's claim in the Wang proceedings was dismissed on 13th June 2014. The sums in court were released, with no recovery by either the MND or ST.

Registration of the Cayman judgment

14. On 11th February 2016 ST applied to the English High Court to register the Cayman judgment pursuant to the 1920 Act. Master Yoxall granted the application on the papers on 4th April 2016, with permission for the MND to apply to set aside the registration within two calendar months and 23 days after service on it of notice of the registration. He directed that execution on the judgment would not issue until after the expiration of that period (or where an application to set aside was made, disposal of the application).

15. On 28th April 2016 ST served the order for registration on the MND in Taipei but the MND did not accept that this service was valid under the law of Taiwan and ignored it. ST attempted to enforce the English registered judgment in Italy and France pursuant to the Recast Brussels Regulation, but those attempts were unsuccessful.

16. By 10th January 2019 the sterling equivalent of the amount outstanding under the Cayman judgment was £3,968,787.14. At that stage ST sought to enforce the judgment against what it says are assets of the MND in London, which finally prompted the MND

to apply to set aside the order for registration of the Cayman judgment made by Master Yoxall.

The judgment of Carr J

17. The judge had to deal with a series of issues, only one of which arises on appeal. She held, in summary, that:

    (1) The English registered judgement was not validly served on the MND in Taiwan in April 2016.

    (2) Such service should not be validated retrospectively.

    (3) ST's application in 2016 to register the Cayman judgment under the 1920 Act was not statute-barred.

    (4) The 1920 Act permits registration in England of a judgment on a judgment, that is to say it gives the court a discretion to register such a judgment provided that the conditions in section 9(2) of the Act are satisfied.

    (5) Those conditions were satisfied because the MND had submitted to the jurisdiction of the Singapore court as a matter of Cayman Islands law.

    (6) As a matter of discretion it was appropriate to allow the Cayman judgment to be registered in England notwithstanding the delay since the Singapore judgment had been obtained and the failure of ST to take steps to enforce the English registered judgment which it had obtained in 2004.

    (7) The registration of the Cayman judgment should not be set aside for non-disclosure or misrepresentation by ST.

    (8) The Writ of Control issued by the English court under Article 53 of the Recast Brussels Regulation as a precursor to enforcement in Italy and France should be set aside.

18. Thus the MND succeeded on the service issues, which meant that ST's attempts to enforce based on the registration in England of the Cayman judgment were premature. However, the judge made a further order that service should be dispensed with pursuant to CPR 6.28. Overall, therefore, the result was that the MND's application to set aside the registration of the Cayman judgment was dismissed, as was the MND's application for a stay of execution, so that the Cayman judgment is enforceable as a judgment in the United Kingdom.

19. The judge granted permission to appeal on point (4) above (whether there can be registration of a judgment on a judgment) on condition that the MND paid £1 million into court, but refused permission on other grounds. The MND renewed an application for permission to appeal on two issues: (1) whether it had submitted to the jurisdiction of the Cayman Islands court and (2) whether the judge exercised her discretion wrongly by allowing the Cayman judgment to be enforced here. However, permission to pursue those further grounds was refused by Coulson LJ. Accordingly the only issue before us is whether the 1920 Act permits registration of a judgment on a judgment, and that issue

arises on the basis (the correctness of which we have not had to consider) that the MND submitted to the jurisdiction of the courts in both Singapore and the Cayman Islands.

20. The judge's essential reason for concluding that the 1920 Act permits registration in England of a judgment on a judgment was that such a judgment is within the definition of "judgment" in section 12 of the Act:

> "87. Whilst I accept that the AJA falls to be construed on its own terms, I am unable to accept the MND's contention that it does not apply to the registration of foreign judgments on foreign judgments made in civil proceedings whereby a sum of money is payable. The definition of 'judgment' provided for in s. 12 of the AJA is very broad and the word 'any', in particular, powerfully inclusive. However desirable it might [be] for judgments on judgments not to be registrable under the AJA and for there to be deterrence against the 'laundering' of judgments, there is no escaping the clear and express words of s. 12 of the AJA, legislation which, unlike the 1933 Act, has not been amended so as to exclude the registration of judgments on judgments. The words of s. 12 of the AJA do not permit a construction which excludes the registration of the Cayman Default Judgment which was a judgment made by a court in civil proceedings whereby a sum of money was made payable. Professor Briggs does not analyse how they might. If Parliament wishes to exclude a judgment on a judgment from registration under the AJA, it can do so by legislative change, as exemplified by the amendment to the 1933 Act. But as a matter of construction the present words of s. 12 encompass the Cayman Default Judgment and ST was able properly to invoke the AJA."

The 1920 Act

21. Part II of the 1920 Act is headed:

> "Reciprocal Enforcement of Judgments in the United Kingdom and in Other Parts of His Majesty's Dominions."

22. Section 9 provides:

> "Enforcement in the United Kingdom of judgments obtained in superior courts in other British dominions.
>
> (1) Where a judgment has been obtained in a superior court in any part of His Majesty's dominions outside the United Kingdom to which this Part of this Act extends, the judgment creditor may apply to the High Court in England **…** 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 they think it just and convenient that the judgment should be enforced in the United Kingdom, and

subject to the provisions of this section, order the judgment to be registered accordingly.

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

(a) the original court acted without jurisdiction; or

(b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court; or

(c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court; or

(d) the judgment was obtained by fraud; or

(e) the judgment debtor satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment; or

(f) the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court.

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

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

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

(4) Rules of court shall provide

> (a) for service on the judgment debtor of notice of the registration of a judgment under this section; and
>
> (b) for enabling the registering court on an application by the judgment debtor to set aside the registration of a judgment under this section on such terms as the court thinks fit; and
>
> (c) for suspending the execution of a judgment registered under this section until the expiration of the period during which the judgment debtor may apply to have the registration set aside.
>
> (5) In any action brought in any court in the United Kingdom on any judgment which might be ordered to be registered under this section, the plaintiff shall not be entitled to recover any costs of the action unless an application to register the judgment has previously been refused or unless the court otherwise orders."

23. Section 12(1) contains definitions, including:

> "The expression 'judgment' means any judgment or order given or made by a court in any civil proceedings, whether before or after the passing of this Act, whereby any sum of money is made payable, and includes an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place.
>
> The expression 'original court' in relation to any judgment means the court by which the judgement was given."

24. Section 14 explains the territories to which the Act applies (with the reference to the High Court in Northern Ireland being the result of a later amendment after Ireland became independent):

> "(1) Where His Majesty is satisfied that reciprocal provisions have been made by the legislature of any part of His Majesty's dominions outside the United Kingdom for the enforcement within that part of His dominions of judgments obtained in the High Court in England, the Court of Session in Scotland, and the High Court in Northern Ireland, His Majesty may by Order in Council declare that this Part of this Act shall extend to that part of His dominions, and on any such Order being made this Part of this Act shall extend accordingly.
>
> (2) An Order in Council under this section may be varied or revoked by a subsequent Order."

25. The 1920 Act now applies to most but by no means all Commonwealth states and British territories. It applies to both Singapore and the Cayman Islands (a British Overseas Territory). A consolidated list of the states and territories to which the 1920

Act applies was set out in a 1984 Order in Council (SI 1984/129) although there have been some further amendments: for the full list see *Civil Procedure* (2020), Volume 1, para 74.6.3.

26. At this stage I would draw attention to four points.

27. First, the states and territories to which the Act applies are those specified in an Order in Council pursuant to section 14(1). They must be within "His Majesty's dominions" (broadly speaking, part of what was then the British Empire) but the fundamental principle for including a state within this regime is reciprocity, as section 14(1) makes clear.

28. Second, registration of a judgment is not possible if any of the conditions set out in section 9(2) applies. These essentially reflect the provisions of the common law. This means, among other things, that a default judgment issued by a court which acted without jurisdiction or to which the defendant did not submit or agree to submit cannot be registered.

29. Third, even if none of those conditions applies, the court always has a discretion under section 9(1) whether or not to permit registration, either within the 12-months' time limit or at all.

30. Fourth, as is clear from section 9(5), the Act preserved the common law method of enforcing a judgment by an action on the judgment, even in the case of a judgment given by a court in a state to which the Act applies, although with a costs penalty if the registration procedure of the Act could have been used.

The Foreign Judgments (Reciprocal Enforcement) Act 1933

31. The registration procedure of the 1920 Act was extended by the Foreign Judgments (Reciprocal Enforcement) Act 1933 to allow the enforcement by registration of judgments given by courts not only in foreign countries which are not part of His Majesty's dominions and which accord reciprocal treatment to the judgments of United Kingdom courts, but also in courts of His Majesty's dominions to which the Act was extended by an Order in Council made under section 7. We are not directly concerned with the provisions of the 1933 Act, but it is instructive to compare these with those of the 1920 Act. Although the language of sections 1 and 4 of the 1933 Act differs from that of section 9 of the 1920 Act, they are to substantially the same effect. As enacted, section 1 provided:

> (1) If, in the case of any foreign country, His Majesty is satisfied that, in the event of the benefits conferred by this Part of this Act being extended to, or to any particular class of, judgments given in the courts of that country or in any particular class of those courts, substantial reciprocity of treatment will be assured as regards the enforcement in that country of similar judgments given in similar courts of the United Kingdom, He may by order in Council direct—
>
> (a) that this Part of this Act shall extend to that country;

> (b) that such courts of that country as are specified in the Order shall be recognised courts of that country for the purposes of this Part of this Act; and
>
> (c) that judgments of any such recognised court, or such judgments of any class so specified, shall, if within subsection (2) of this section, be judgments to which this Part of this Act applies.
>
> (2) A judgment of a recognised court is within this subsection if it satisfies the following conditions, namely—
>
> (a) it is either final and conclusive as between the judgment debtor and the judgment creditor or requires the former to make an interim payment to the latter; and
>
> (b) there is payable under it a sum of money, 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; and
>
> (c) it is given after the coming into force of the Order in Council which made that court a recognised court.
>
> (3) For the purposes of this section, a judgment shall be 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.
>
> (4) His Majesty may by a subsequent Order in Council vary or revoke any Order previously made under this section.

32. Section 4 provides:

> (1) On an application in that behalf duly made by any party against whom a registered judgement may be enforced, the registration of the judgement—
>
> (a) shall be set aside if the registering court is satisfied—
>
> (i) that the judgment is not a judgment to which this Part of this Act applies or was registered in contravention of the foregoing provisions of this Act; or
>
> (ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case; or
>
> (iii) that the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings

in sufficient time to enable him to defend the proceedings and did not appear; or

(iv) that the judgment was obtained by fraud; or

(v) that the enforcement of the judgment would be contrary to public policy in the country of the registering court; or

(vi) that the rights under the judgment are not vested in the person by whom the application for registration was made;

(b) may be set aside if the registering court is satisfied that the matter in dispute in the proceedings in the original court had previously to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.

(2) For the purposes of this section the courts of the country of the original court shall, subject to the provisions of subsection (3) of this section, be deemed to have had jurisdiction—

(a) in the case of a judgment given in an action in personam—

(i) if the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings . . .; or

(ii) if the judgment debtor was plaintiff in, or counter-claimed in, the proceedings in the original court; or

(iii) if the judgment debtor, being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the country of that court; or

(iv) if the judgment debtor, being a defendant in the original court, was at the time when the proceedings were instituted resident in, or being a body corporate had its principal place of business in, the country of that court; or

(v) if the judgment debtor, being a defendant in the original court, had an office or place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place;

(b) in the case of a judgment given in an action of which the subject matter was immovable property or in an action in rem

> of which the subject matter was movable property, if the property in question was at the time of the proceedings in the original court situate in the country of that court;
>
> (c) in the case of a judgment given in an action other than any such action as is mentioned in paragraph (a) or paragraph (b) of this subsection, if the jurisdiction of the original court is recognised by the law of the registering court.
>
> (3) Notwithstanding anything in subsection (2) of this section, the courts of the country of the original court shall not be deemed to have had jurisdiction—
>
> (a) if the subject matter of the proceedings was immovable property outside the country of the original court; or …
>
> (c) if the judgment debtor, being a defendant in the original proceedings, was a person who under the rules of public international law was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not submit to the jurisdiction of that court.

33. Section 11 defines "judgment" in materially the same terms as the 1920 Act, save that it extends also to compensation or damages in criminal proceedings. "Original court" is defined in the same terms as the 1920 Act.

34. It is apparent that these provisions are more detailed than those contained in the 1920 Act. However, as indicated in paragraph 2 of the Report of the Committee chaired by Greer LJ dated 12th December 1932 which led to the passing of the 1933 Act ("the Greer Committee Report"), the 1933 Act was viewed as being "substantially similar" to the 1920 Act. The principle on which the 1933 Act is based is the same principle of reciprocity as underpins the 1920 Act. Indeed, it appears from the Greer Committee Report that one driver of the 1933 Act was a concern that the existing position was unbalanced and unfair: whereas foreign judgments could be enforced in England by means of an action on the judgment at common law, there was no equivalent method of enforcing English judgments abroad so that a claimant successful against the foreign defendant "often finds that he has to fight his case over again on the merits in the foreign court" (*ibid*).

35. Greer LJ reiterated this point, emphasising that both the 1920 and the 1933 Acts were based on the principle of reciprocity, in an early case on the 1933 Act, *Yukon Consolidated Gold Corporation Ltd v Clark* [1938] 1 KB 241:

> "The Act of 1920 provided for the registration of a judgment obtained in His Majesty's Dominions, but did not deal with foreign judgments. The heading of the Act of 1920 is: 'An Act to amend the law with respect to the administration of justice and with respect to the constitution of the Supreme Court, to facilitate the reciprocal enforcement of judgments and awards in the United Kingdom and other parts of His Majesty's Dominions or Territories under His Majesty's protection,' and the heading

> of Part II of the same statute is: 'Reciprocal Enforcement of Judgments in the United Kingdom and in other parts of His Majesty's Dominions,' and did not in any way deal with foreign judgments. It was however fully appreciated by those who thought about foreign judgments, that British judgments were never enforced as of right in foreign countries, and that was believed, and rightly believed, to operate as an injustice to this country. Whereas we enforced foreign judgments by means of action in this country, foreign countries refused to enforce the judgments obtained in this country, and it was to deal with that situation that the statute of 1933 was passed, but incidentally, it also dealt with Dominion judgments. Now it seems to me to be quite clear with regard to s.1 and s.2 of the Act of 1933, that the statute is concerned with the enforcement of foreign judgments and Dominion judgments, where it could be established that there were reciprocal rights in the foreign countries or in the Dominions …"

36. One important difference between the 1920 Act and the 1933 Act is that while registration under the 1920 Act is discretionary, in the 1933 Act there is no discretion to refuse registration if the criteria for registration are satisfied. This was deliberate and was intended to promote reciprocity. The Greer Committee identified a mistaken but nevertheless real concern on the part of foreign courts that the existing English common law rules for enforcing foreign judgments were largely discretionary and that this made them reluctant to recognise English judgments.

The Civil Jurisdiction and Judgments Act 1982

37. Section 1 of the 1933 Act was amended by the Civil Jurisdiction and Judgments Act 1982 by the insertion of a new sub-section (2A). This stated, among other things, that a judgment on a judgment was not within section 1(2) and therefore was not eligible for registration under the 1933 Act. No equivalent amendment was made to the 1920 Act.

38. For completeness, I should also note that sections 32 and 33 of the 1982 Act provide (in summary) that an overseas judgment in proceedings brought in breach of a dispute resolution clause will not be recognised or enforced in the United Kingdom; and that steps taken in an overseas court which go no further than is necessary to contest the jurisdiction of that court, to seek dismissal or a stay of the proceedings in reliance on an arbitration or exclusive jurisdiction clause, or to protect, or obtain the release of, property seized or threatened with seizure in the proceedings, will not be treated as a submission to the jurisdiction of the overseas court. Section 33 was relevant to the question whether the MND had submitted to the jurisdiction of the Cayman Islands court, but as I have indicated that question is not before us on appeal.

39. The main effect of the 1982 Act, of course, was to incorporate the Brussels Convention, subsequently superseded by the Brussels Regulation and the Recast Brussels Regulation, into English law. That constituted a new regime for the reciprocal recognition and enforcement of judgments within the European Union.

The submissions on appeal

40. Mr Andrew Onslow QC for the MND acknowledged that the definition of "judgment" in section 12 of the 1920 Act was capable of extending to a judgment on a judgment given in a third state, but submitted that when the Act is read as a whole and in the context of the common law, it should not be understood as doing so. He submitted in particular that the common law does not permit an action to enforce a judgment on a judgment; that at common law the judgment to be enforced must be a final and conclusive judgment on the merits of the underlying dispute; and that the 1920 Act should be interpreted as reflecting the position at common law. He submitted in addition that there are clear indications in the 1920 Act itself and in its legislative background to demonstrate that the Act does not permit registration of a judgment on a judgment. Those indications, he submitted, include that it is fundamental to the operation of the Act that the English court should be able to scrutinise the proceedings in the court which gave judgment on the underlying dispute in order to ensure (for example) that this court had jurisdiction; that the Act contemplates only two stages, namely the proceedings in the court leading to a judgment on the merits of the underlying dispute and the proceedings in England for registration of that judgment, and not three stages also involving an intermediate court; and that to interpret the Act as permitting registration of a judgment on a judgment would unbalance the reciprocity on which the Act is based. Mr Onslow relied also on the reports which led to the passing of the 1920 and 1933 Acts and on academic and textbook writings.

41. Mr Hashim Reza for ST supported the judge's interpretation of the 1920 Act. He submitted that what matters is the true meaning of the Act and that the common law is irrelevant. The language of the Act, including in particular the definition of "judgment" in section 12, is clear and there is no reason to conclude that Parliament intended to exclude a judgment on a judgment from the registration process. To the extent that registration of a judgment on a judgment might in some circumstances constitute an abuse, for example if the court which gave judgment on the underlying merits did not have jurisdiction, the English court could exercise its discretion under section 9(1) not to permit registration. Alternatively, Mr Reza submitted that, if the common law is relevant, it was sufficient that the Cayman Islands court had jurisdiction because the MND had submitted there, so that the Cayman judgment created an obligation on the MND to pay the judgment sum in accordance with common law principles.

Discussion

The position at common law

42. At common law the means of enforcing the judgment of a foreign court is by an action on the judgment. The theoretical basis for this was explained by Lord Collins of Mapesbury in *Rubin v Eurofinance SA* [2012] UKSC 46, [2013] 1 AC 236 at [9]:

> "The theoretical basis for the enforcement of foreign judgments at common law is that they are enforced on the basis of a principle that where a court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum, on which an action of debt to enforce the judgment may be maintained: *Williams v Jones* (1845) 13 M & W 628, 633 per Parke B; *Godard v Gray* (1870) LR 6 QB 139, 147, per Blackburn J; *Adams v Cape Industries plc* [1990] Ch 433, 513; *Owens Bank Ltd v Bracco*

> [1992] 2 AC 443, 484, per Lord Bridge of Harwich. As Blackburn J said in *Godard v Gray*, this was based on the mode of pleading an action on a foreign judgment in debt, and not merely as evidence of the obligation to pay the underlying liability: LR 6 QB 139, 150. …"

43. However, as Lord Collins went on to say, this is a theoretical and historical basis for the enforcement of foreign judgments at common law, which does not apply to enforcement under statute:

> "… But this is a purely theoretical and historical basis for the enforcement of foreign judgments at common law. It does not apply to enforcement under statute, and makes no practical difference to the analysis, nor, in my judgment, to the issues on these appeals."

44. Nevertheless, the common law action on a judgment remains important. As we have seen, it was not abolished by the 1920 Act and it remains the only means of enforcing a judgment given by a court in a state (such as the United States of America) to which no reciprocal statutory arrangements apply.

45. One significant strand running through Mr Onslow's submissions was that enforcement of a judgment on a judgment is not possible at common law. For this purpose he cited *Nouvion v Freeman* (1889) 15 App Cas 1, albeit recognising that this case does not actually decide the point. The first answer which I would give to this submission is that, in truth, the common law has never had to grapple with the question whether such a judgment can be enforced and the reasoning in *Nouvion v Freeman* does not indicate what answer to that question it would have given. The issue in *Nouvion v Freeman* was whether a Spanish "remate" judgment could be enforced by action at common law when that judgment was essentially provisional, as it was open to the losing party to take "plenary" proceedings in which the merits of the issue would be reconsidered. The House of Lords held that it could not be enforced because such a judgment was not "final and conclusive". Lord Herschell explained what is meant by saying that the foreign judgment must be "final and conclusive" in these terms (emphasis added):

> "My Lords, I think that in order to establish that such a judgment has been pronounced it must be shewn 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 thought to be made conclusive evidence in this country, so as to make it *res judicata* between the parties. If it is not conclusive in the same Court which pronounced it, so that notwithstanding such a judgment the existence of the debt may between the same parties be afterwards contested in that Court, and upon proper proceedings being taken and such contest being adjudicated upon, it may be declared that there existed no obligation to pay the debt at all, then I do not think that a judgment which is of that character can be regarded as finally and conclusively evidencing the debt, and so entitling the person who has obtained the judgment to claim a decree from our Courts for the payment of the debt.

> The principle upon which I think our enforcement of foreign judgments must proceed is this: that in a Court of competent jurisdiction, *where according to its established procedure the merits of the case were open*, at all events, to the parties, however much they may have failed to take advantage of them, or may have waived any of their rights, a final adjudication has been given that a debt or obligation exists which cannot thereafter in that Court be disputed, and can only be questioned in an appeal to a higher tribunal. In such a case it may well be said that giving credit to the Court of another country we are prepared to take the fact that such adjudication has been made as establishing the existence of the debt or obligation. But where, as in the present case, the adjudication is considered with the non-existence of the debt or obligation which it is sought to enforce, and it may thereafter be declared by the tribunal which pronounced it that there is no obligation and no debt, it appears to me that the very foundation upon which the Courts of this country would proceed in enforcing a foreign judgment altogether fails."

46. Mr Onslow relied on the words which I have emphasised as showing that a judgment is only enforceable at common law if it is given by a court in which "the whole merits of the case were open" which, he said, is not the position in an "intermediate" court such as the Cayman Islands court in this case. But it is clear from the passage as a whole that Lord Herschell was simply not addressing that issue. *Nouvion v Freeman* decides no more than that a judgment which can be set aside by further proceedings in the court which pronounced it, in which the existence of an obligation will be considered afresh, does not satisfy the common law requirement that in order to create an enforceable obligation a foreign judgment must be final and conclusive.

The correct approach

47. In my judgment it is neither necessary nor productive to decide what answer the common law would give to the question whether a judgment on a judgment can be enforced by action if that question were now to arise. That is because, although they restate much of the common law position, neither the 1920 nor the 1933 Act purports to codify the common law. It was so held by Widgery J in *Societe Cooperative Sidmetal v Titan International Ltd* [1966] 1 QB 828 so far as the 1933 Act is concerned and the position is the same for the 1920 Act. The right approach, in my judgment, is to consider the 1920 Act on its own terms and in the light of the purpose of the legislation as seen in the Report of the Committee chaired by Lord Sumner dated May 1919 ("the Sumner Committee Report") which led to its passing.

48. Support for that approach can be found in the recent Privy Council case of *Yearwood v Yearwood* [2020] UKPC 26. The issue was whether a financial remedy order in matrimonial proceedings made by the English court could be registered in Antigua and Barbuda under the Reciprocal Enforcement of Judgments Act which was for relevant purposes in the same terms as the 1920 Act. One of the defendant's arguments, relying on *Nouvion v Freeman*, was that the financial remedy order was not registrable as a judgment because it was not "final". That was because it provided for adjustments to be made if the husband failed to comply. The Privy Council did not find that a helpful approach. Lady Black said:

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

49. While this reasoning depends partly on the nature of matrimonial proceedings, it demonstrates also that when deciding whether registration is permitted under the equivalent of the 1920 Act, the principal focus must be upon the Act itself.

50. It is, however, appropriate to approach the terms of the Act against the background that the present issue had never arisen at common law. It seems unlikely, therefore, that Parliament would have had the possibility of enforcement of a judgment on a judgment in mind.

A literal approach

51. As Mr Onslow acknowledged, and as the judge held, the Cayman judgment is within the literal definition of the term "judgment" in section 12 of the 1920 Act. It is a judgment given in civil proceedings whereby a sum of money is made payable. Its terms simply order that the defendant (the MND) must pay the plaintiff (ST) the sums adjudged due by way of principal, interest and costs. In that respect it is unlike an order (including an order for registration under the 1920 or 1933 Acts) which says no more than that the foreign judgment can be registered and enforced in the registering state.

52. Further, the term "original court" is defined to mean "the court by which the judgment was given", which must refer to the judgment which it is sought to enforce by registration, that is to say (in this case) the Cayman judgment. On a literal approach, therefore, the "original court" in the present case was the Cayman Islands court. It is therefore possible to tick off the requirements set out in section 9(2): the Cayman Islands court had jurisdiction to which the MND submitted; the MND was duly served; the Cayman judgment was not obtained by fraud; no appeal from it was pending; and the Cayman judgment was in respect of a cause of action (i.e. the obligation created by the Singapore judgment) which was not contrary to English public policy.

A more purposive construction

53. However, the real question, as it seems to me, is whether this literal approach to the meaning of the Act is correct. For the reasons which follow, which are essentially those given by Mr Onslow, I do not think that it is. I consider that greater weight must be given to the purpose and scheme of the legislation.

54. First, the fundamental principle on which the 1920 Act is based is one of reciprocity. Judgments of foreign courts will only be recognised in the United Kingdom if reciprocal provisions have been made by the legislature of the Commonwealth state in which the judgment was given. That is clear from the terms of the Act itself and is underlined by the Sumner Committee Report which led to its passing. That Report ruled out the idea of simply making a judgment obtained in any part of what was then the British Empire enforceable throughout the Empire and instead proposed a scheme which included what became the safeguards set out in section 9(2). It shows also that although the 1920 Act was to be limited to the Empire, it was seen as a first step towards the making of reciprocal arrangements with foreign countries generally. The essential principle, therefore, was not, as it might have been, one of "mutual trust" between different parts of the Empire, but a principle of reciprocity with safeguards.

55. While there are such reciprocal arrangements between the United Kingdom and the Cayman Islands (and, as it happens, but irrelevantly to the issue of principle, between the United Kingdom and Singapore), to interpret the Act as permitting registration of a judgment on a judgment would unbalance this reciprocity. It would mean that a judgment given in a state with which no such arrangements existed and which was not even in the Commonwealth (for example, the United States) could in effect be registered for enforcement here by the expedient of an action to enforce that judgment in an intermediate state to which the 1920 Act does apply, an expedient sometimes described somewhat pejoratively as "judgment laundering". It would not, in my judgment, be a sufficient answer to this possibility to say that such registration might if necessary be refused as a matter of discretion. Parliament cannot have intended the discretion in section 9(1) to deal with that situation. If it had done so, it would have included an equivalent discretion in the 1933 Act which was also, and even more obviously in view of its title, based on reciprocity, or would at least have addressed the issue in some other way. But it did not do so. Nor would it be an answer to say that the defendant need not submit to the jurisdiction of the intermediate court. The defendant might have no choice about that, for example if it had a presence in the state concerned. Moreover, at the time when the 1920 Act was enacted, the statutory protection against being held to have submitted to a foreign jurisdiction contained in section 33 of the Civil Jurisdiction and Judgment Act 1982 did not exist.

56. Essentially this same issue arose in *Owen v Rocketinfo Inc* (2008) 305 DLR (4^{th}) 370, a case before the British Columbia Court of Appeal. The claimant obtained a default judgment in Nevada which he then entered as a "sister state" judgment in California. He then commenced proceedings in British Columbia seeking registration of the California judgment in accordance with legislation which appears to have been similar in material respects to the 1920 Act. In particular, the definitions of "judgment" and "original court" were materially the same. Reciprocal arrangements for the enforcement of judgements existed between British Columbia and California, but not between British Columbia and Nevada. The Court of Appeal held that the California judgment could not be registered for three reasons. The first concerned the nature of the California judgment. It was not a judgment which itself made money payable, but merely made the Nevada judgment enforceable in California, and therefore was not within the statutory definition of "judgment". The second reason was that there were specific indications in the British Columbia legislation that it did not apply to the registration in an intermediate state of a judgment originally given in a third state. It is the third reason, however, which is presently of interest. This was that to allow the registration of the

Nevada judgment would be contrary to the principle of reciprocity. Giving the judgment of the court Tysoe JA said:

> "21. My interpretation of the term 'judgment' is consistent with the purpose of the legislation as contained in sections 29(1) and 37(1). To allow the appellant's judgment to be registered in British Columbia would have the effect of permitting registration of a judgment granted by a court of a non-reciprocating jurisdiction, contrary to the intent of sections 29(1) and 37(1). In my view, the Legislature did not intend to provide for registration in British Columbia of a judgment granted by a court of another jurisdiction by an indirect method it is not permitted to be done directly. Otherwise, when the Lieutenant Governor in Council declared a state to be a reciprocating state, it would have the effect of declaring all of the jurisdictions that are reciprocal to that jurisdiction to also be states reciprocal to British Columbia for the purpose of registering judgements. In the case of declaring California to be a reciprocating state, the Lieutenant Governor in Council would effectively be declaring all other states of the United States of America to be reciprocating states because California permits the entry of sister state judgements issued by a court of any of the states of the United States."

57. I find this reasoning compelling. It applies equally to the 1920 Act.

58. Second, what I have called the safeguards included in section 9(2) really only make sense if they refer to the proceedings in the court which gave judgment on the underlying dispute. This confirms that the Act contemplates only two stages, the proceedings in the court leading to a judgment on the merits of the underlying dispute and the proceedings in England for registration of that judgment, and not three stages also involving an intermediate court. I would accept that, literally, it is possible to interpret "the original court" in section 9(2) as referring to an intermediate court whose judgment it is sought to register, so that (in the present case) the question would be whether the Cayman Islands court had jurisdiction, whether the MND submitted to the jurisdiction of that court, and so on, but it is plain in my judgment that this is not what the section is concerned with. The fact that, in circumstances where this issue had never arisen at common law, Parliament is unlikely to have had the possibility of enforcement of a judgment on a judgment in mind, suggests that it would have contemplated that the "original court" whose judgment it was sought to register would be the same court which had dealt with the underlying dispute and not an intermediate court such as the Cayman Islands court in this case.

59. It is fundamental to the operation of the Act that the English court should be able to scrutinise the proceedings in the court which gave judgment on the underlying dispute in order to ensure that the conditions for registration are satisfied. This appears most clearly, perhaps, from paragraph (f) of section 9(2), which provides that no judgment shall be registered if "the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court". This is plainly directed to the underlying cause of action (here, the cause of action in Singapore) and not the distinct but somewhat theoretical cause of action (sued on in the Cayman Islands) to enforce the obligation created by the

judgment of the Singapore court. To interpret paragraph (f) as referring to the cause of action in an intermediate court would accord greater substance than is warranted to what Lord Collins described in *Rubin v Eurofinance SA* as the "theoretical and historical basis for the enforcement of foreign judgments at common law".

60. Once again, it is no answer to say that when registration of the judgment of an intermediate court is sought, the application of the section 9(2) safeguards to the court which gave judgment on the underlying cause of action can be dealt with as a matter of discretion under section 9(1). If that had been Parliament's intention, it would have included a discretion to deal with the equivalent safeguards in the 1933 Act.

61. For these reasons it is appropriate, in my judgment, to interpret the 1920 Act as permitting registration of a judgment given by a court which adjudicated on the merits of the underlying claim, but not as extending to permit registration of a judgment on a judgment.

The commentators

62. As I have indicated, this conclusion accords with the consensus among those commentators who have considered the issue that it should not be possible to register a judgment on a judgment under the 1920 or 1933 Acts or their foreign equivalents.

63. *Dicey, Morris & Collins* (15th Edition, 2018) gives strong support to the MND's position. It suggests at paragraph 14-121 that English law will not treat a judgment on a judgment as final and conclusive on the merits. That is not quite the same as saying that it cannot be registered under the 1920 Act, but in practice it amounts to much the same thing. Three reasons are suggested:

> "It is unlikely, however, that 'judgment' in this sense extends to a decision of a foreign court that the judgment of the court of a third country is entitled to be enforced under the law of the foreign country, even where the proceedings in the foreign court were contested by parties who submitted to its jurisdiction in relation to this issue. The civil law principle that *exequatur sur exequatur ne vaut* is sometimes used to help explain why a judgment from the third state is not converted into an enforceable judgment by virtue of its recognition or endorsement by another court. Though no English case expressly so holds, the principle is sound for at least three reasons: the effect of the foreign proceedings will often only be to declare the third country judgment to be enforceable or executable within the territory of the foreign court, an order which by its very terms can have no effect in England; the foreign judgment will not usually be on the merits of the claim; and because of the confusion liable to result if both the judgment of the third country and the foreign (enforcement) judgment were to be separately enforceable in England".

64. The first of these reasons does not apply in this case, where the Cayman Islands judgment is not limited to holding that the Singapore judgment is enforceable in the Cayman Islands. The second reason does apply, assuming (as I consider to be likely)

that what is meant by "the merits of the claim" is the merits of the underlying claim as distinct from the merits of the cause of action to enforce the obligation created by the Singapore judgment. The third point is capable of arising, however, in any case where (for example) interest runs either before or after judgment at different rates in the initial and the intermediate courts and where different costs awards are made in the two jurisdictions.

65. *Briggs, Civil Jurisdiction and Judgments* (6th Edition, 2015) is to the same effect, in particular at paragraphs 7.66 and 7.86. So too are *Patchett, Recognition of Commercial Judgments and Awards in the Commonwealth* (1984) at paragraph 3.12 and an article by Professor Smart, *Conflict of Laws: Enforcing a judgment on a judgment?* (2007) 81 ALJ 349, commenting on *obiter dicta* in the first instance decision of a Hong Kong court that an English judgment registered in Singapore could be registered in Hong Kong despite the absence of reciprocal registration arrangements between the United Kingdom and Hong Kong after 1997 (see *Morgan Stanley & Co International Ltd v Pilot Investments Ltd* [2006] 4 HKC 93). The dicta in *Morgan Stanley* were to the effect that because the Hong Kong legislation was similar to the unamended 1933 Act, and because the 1933 Act was amended in 1982 to make clear that there could be no registration of a judgment on a judgment, therefore such registration must have been possible before the 1982 amendment. With respect, however, this does not follow.

Other matters

66. For completeness I should mention three other matters which featured in the parties' submissions but which, in the end, have provided no real guidance.

67. One is that Mr Onslow submitted that if the 1920 Act permits registration of a judgment on a judgment, it is an outlier when compared to the regimes existing at common law, under the 1933 Act (at any rate since the 1982 amendment) and under the Brussels regime (for which he cited [20] to [23] of the opinion of Advocate General Lenz in Case C-129/92 *Owens Bank Ltd v Bracco* [1994] QB 509), none of which permits enforcement of such a judgment. That may be so, although as I have already explained, the position at common law has never been decided. In any event, however, even if it is correct, the submission sheds no real light on the true meaning of the 1920 Act.

68. Next, while it is interesting that the 1933 Act was amended in 1982 to make clear that there could be no registration of a judgment on a judgment and that no equivalent amendment was made to the 1920 Act, I do not see that this sheds light on what Parliament intended when passing the 1920 Act. The amendment of the 1933 Act is at least consistent with a desire to clarify what the position was already thought to be and does not necessarily represent a change. It is not at all clear why the 1920 Act was not amended at the same time and it is at least possible that this was simply overlooked. In any event the absence of a clarifying amendment in 1982 does not tell us much or anything about Parliament's intention in 1920.

69. Finally, Mr Reza had a submission that the 2014 Consent Order in the Cayman Islands constituted "a separate pathway" to upholding the judgment of Carr J. With respect, I found that submission hard to follow. The only relevance of the 2014 Consent Order is that it supports a submission that the MND submitted to the jurisdiction of the Cayman Islands court. But that, as I have explained, is the basis on which this appeal has

proceeded. Mr Reza also made some submissions to the effect that the MND is a judgment debtor whose attempts to evade payment are lacking in merit. That may or may not be so, but cannot affect the issue of principle with which this appeal is concerned.

Disposal

70. In my judgment the 1920 Act does not permit registration of a judgment given by a court in one state in an action to enforce a judgment given by a court in another state. I would therefore allow the appeal and set aside the order of Master Yoxall for the registration here of the Cayman judgment.

Lady Justice Elisabeth Laing:

71. I agree.

Lord Justice David Richards:

72. I also agree.