Neutral Citation Number: [2025] EWHC 42 (KB)

Appeal No: KA-2024-000091

IN THE HIGH COURT OF JUSTICE
HIGH COURT APPEAL CENTRE
ROYAL COURTS OF JUSTICE
KING'S BENCH DIVISION

ON APPEAL FROM
THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
FOREIGN PROCESS SECTION
(MASTER COOK)

IN THE MATTER OF COUNCIL REGULATION (EC) NO. 44/2001

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/01/2025

Before :

MR JUSTICE KERR

- -

Between :

(1) BIRGITTE WAGNER OLSEN **(2) KARSTEN OLSEN**	**Appellants**
- and –	
FINANSIEL STABILITET A/S	**Respondent**

- -
- -

The **Appellants** appeared in person
Rory Turnbull (instructed by **Freeths LLP**) for the **Respondent**

Hearing dates: 10 and 11 December 2024

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Approved Judgment

This judgment was handed down remotely at 2pm on 16 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Kerr :

Introduction: the appeal

1. The appellants appeal against the decision of Master Cook made in his order dated and sealed on 16 August 2023 (**the registration order)** to register in this court a judgment against the appellants given by a Danish court at Hjørring, Denmark on 16 August 2013 (**the Danish judgment**), for enforcement in England and Wales. The Danish court held that the appellants must pay the respondent just over €5.8 million, plus about 1.25 million Danish Kroner.

2. The appeal lies as of right. The appellants had no right to make submissions to Master Cook but do not need permission to appeal and file evidence; see Civil Procedure Rules (**CPR**), rule 74.8(2). They had two months (from service of the registration order) in which to appeal. The registration order prevented any enforcement action until the expiry of the two month time limit. The appeal was brought in time and the stay on enforcement action has continued since.

3. The appellants submit that the registration order was wrongly made and should be set aside, on various grounds. They also say it was made after the expiry of the relevant Danish law limitation period, 10 years from the date of the Danish judgment; and that if that is wrong, the 10 year limitation period expired at the end of 16 August 2023 and therefore the registration order is worthless because the Danish judgment became time barred at the end of the day of registration.

4. The respondent says the registration order was properly made and cannot be assailed. All the formalities were observed and the order was made before expiry of the limitation period. The respondent submits further that the Danish law limitation period is irrelevant: its expiry at the end of 16 August 2023 does not affect the validity of the registration order; and in any case, a fresh six year limitation period started to run from that date under English domestic law.

The facts

5. The appellants are a married couple with a background in engineering, renewable energy, business administration and finance. In 2003, they set up a renewable energy company based in Denmark. The company borrowed money from a bank which got into difficulties in the financial crisis of 2008 and 2009. The bank loans were transferred to the respondent, which has been described as a "bad bank" established to absorb some of the shocks of the financial crisis.

6. Unfortunately, the businesses failed, the loans were called in and after unsuccessful rescue efforts, the businesses went into compulsory liquidation. The appellants were guarantors of the loans. They moved from Denmark to England in May 2011, where they lived in London, at 17 Mortimer Crescent, NW6. In November 2011, the respondent brought proceedings in the court of Hjørring, Denmark, to enforce the guarantees.

7. The appellants did not contest Danish jurisdiction, though resident in London. The judgment recorded their address as 17, Mortimer Crescent, London NW6 5NP. The appellants denied liability and gave evidence at the trial in Hjørring.

On 16 August 2013, the court at Hjørring gave judgment against them in the Danish judgment, as related above.

8. The appellants attempted to appeal against the Danish judgment, but the appeal fee was not paid and the appeal in Denmark therefore lapsed. Although the appellants do not accept that the Danish judgment has been properly authenticated, they accept that the proceedings were brought; that they gave evidence at the trial; that the court found against them; and that in consequence the debts ordered by the court to be paid became due under the Danish judgment.

9. In the witness statement of Mr Sajjid Kurmani, the respondent's English solicitor, he explains that the appeal was not finally dismissed until May 2015 and that "[s]ubsequently" the respondent "learned that the [appellants] had left Denmark to settle in England". However, their address was given as Mortimer Crescent, in London, in the Danish judgment itself, in August 2013.

10. Mr Kurmani explains that the respondent caused enquiry agents to attend at Mortimer Crescent in February 2016, as confirmed by correspondence at the time which also shows the enquiry agents investigated several other addresses; but Mr Kurmani says although it was clear that the appellants "were residing in England, a permanent residential address could not be found".

11. The respondent, Mr Kurmani explains, decided instead to await the appellants' return to Denmark and then enforce the Danish judgment there. When they failed to make an appearance in Denmark, the respondent turned its attention back to England, but not until the first half of 2023. In July 2023, less than a month before expiry of the Danish limitation period, the respondent sent demand letters by courier to the appellants' last known residential address in the United Kingdom and also to the Mortimer Crescent address.

12. Receiving no response, on 10 August 2023 the respondent instructed Mr Kurmani's firm, Freeths LLP, to apply for registration of the Danish judgment in England. From 10 to 14 August, Freeths and the respondent's Danish lawyers strove to assemble the documents needed to make the application, liaising with both the English and Danish courts. They also obtained an opinion from the Danish lawyers dated 14 August 2023 addressing the limitation issues.

13. The application was made on 14 August 2023, *ex parte* in the usual way, but on an extremely urgent basis because of the imminent expiry of the Danish limitation period. It was supported by Mr Kurmani's witness statement made on 14 August 2023. The court was asked to make the order before the end of 16 August 2023. The N244 application notice was sealed by the court on 16 August 2023.

14. Master Cook made the registration order that day and it was sealed the same day, 16 August 2023. It provided at paragraph 1 that the Danish judgment "be registered in the King's Bench Division of the High Court of Justice under Council Regulation (EC) No. 44/2001 for enforcement in England and Wales". After setting out the debts, paragraphs 5 and 6 stated that the appellants have two months from service of the order in which to appeal and that no enforcement measures (other than to preserve property) could be taken meanwhile.

15. In the registration order, Master Cook left open the issue of costs. The draft order provided for costs but he left the costs provision blank in the registration order. On 18 September 2023 he returned to the issue of costs and summarily assessed them in the amount of £12,500, to be added to the judgment debt as registered. He made provision to that effect in a supplemental order made and sealed on 18 September 2023.

16. The registration order, the supplemental costs order and the other court documents were served by a process server on the appellants on 25 March 2024. By then the appellants were living at a flat in Guildford, where they still live. They appealed, within the two month period. There was then some confusion because the respondent's English solicitors wrongly treated the appeal as subject to permission, whereas it lies as of right (CPR rule 74.8(2)).

17. Garnham J then made an order in June 2024 for the question of permission to be dealt with at an oral hearing. Unfortunately the respondent's solicitors did not, as they should have done, draw Garnham J's attention to CPR rule 74.8(2). The appeal lies as of right because an appellant has no right to make representations to the court below. The appellant's one and only opportunity to challenge a registration decision is by appealing against it.

18. When the matter came before me on 15 July 2024, I pointed out that permission to appeal was not needed and gave directions at a short video hearing for determination of the substantive appeal over a two day hearing. The matter then came before me again at the hearing of the appeal, on 10 and 11 December 2024, when the appellants represented themselves and Mr Rory Turnbull appeared for the respondent.

19. The appellants produced "updated" grounds of appeal dated 29 July 2024, to which I shall return. The respondent did not object to the expansion of the grounds of appeal. The bundles were very extensive and the appellants' documents lengthy, voluminous and (if I may say so with respect) their arguments repetitive and prolix; no doubt reflecting their lack of legal training and qualifications.

Issues, reasoning and conclusions

20. I will start with matters that are not in dispute. It is not disputed that Council Regulation (EC) No. 44/2001 (**the Judgments Regulation**) applies in this case, because the proceedings in Denmark were instituted before 10 January 2015. The application of the Judgments Regulation (despite its repeal) in this case is provided for by a combination of article 67 of the Agreement on the Withdrawal of the United Kingdom from the European Union and article 66 of Regulation (EU) No. 1215/2012, often called the Recast Brussels Regulation.

21. I had occasion in *Lawrenson v. Crédit Immobilier de France Développement* [2023] EWHC 1378 (KB) to summarise at [52]-[54] the effect of the Judgments Regulation in a manner that will also do for this case (though *Lawrenson* concerned an authentic instrument rather than a judgment):

> "52. Chapter III of the Judgments Regulation deals with recognition and enforcement of judgments. A judgment is broadly defined in article 32 but it must be given by a 'court or tribunal' of a member state (**originating state**). It must normally be recognised in the courts of other member states unless that would be 'manifestly contrary to public policy' in the member state where recognition is sought (**receiving state**) (article 34(1)).
>
> 53. There are exceptions in the case of certain default judgments and where judgments in different states are irreconcilable (article 34(2)-(4)). Under no circumstances may a foreign judgment be reviewed as to its substance (article 36). By article 37(1), a court in the receiving state may stay the recognition proceedings if 'an ordinary appeal' against the judgment in the originating state has been lodged.
>
> 54. Subject to those caveats, judgments must be recognised and enforced in receiving states on application by an interested party; but in the case of the United Kingdom, enforcement is in the part of the UK where the judgment is registered (article 38). The judgment is declared enforceable immediately, on completion of required formalities. The other party may not make submissions on the application (article 41)."

22. The actual words of article 38 are:

> "(1) A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.
>
> (2) However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland, or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom."

23. It is also common ground that the 10 year Danish limitation period running from 16 August 2013, the date of the Danish judgment, has expired. There is a difference, to which I will return soon, about whether it expired at midnight on 15 August 2023 (just before the registration order) or at midnight on 16 August 2023 (just after the registration order).

24. I have to decide in this appeal, first, whether the registration order was properly and lawfully made. That depends on whether the necessary formalities were properly observed in the respondent's application to Master Cook; whether there is any public policy reason why the Danish judgment should not be enforceable here; and whether the Danish law limitation period had already expired when the registration order was made.

The formalities of registration

25. As to the formalities, the appellants very politely made accusations of serious impropriety by the respondent, which they say occurred during the rushed process of obtaining documents from the Danish court at Hjørring and in obtaining and serving the registration order. They said the respondent obtained a non-certified version of the Danish judgment, with the wrong logo; submitted

an incomplete "Annex V", missing the certified judgment and translation; and failed to provide a court seal, notarisation and "apostille".

26. They also complained that it took some eight months to serve them with the registration order and that the appellants did not receive the demand letters, depriving them of their right in Danish law to challenge or settle the debt claim prior to litigation. They made further complaints of procedural irregularity and lack of financial transparency in the history of the litigation.

27. The appellants cited wide ranging international and domestic law instruments and case law. I need not set out here all the authorities they cited. Many of them were not relevant. They included, for example, such diverse instruments as the Foreign Judgments (Reciprocal Enforcement) Act 1933; the Hague Apostille Convention (1961); the Human Rights Act 1998; and the General Data Protection Regulation.

28. The appellants' detailed arguments were set out in a lengthy 30 page skeleton argument prepared for the appeal hearing. The "updated" grounds of appeal were set out in their earlier document dated 29 July 2024, making similar complaints but more succinctly. That document included a summary describing the updated grounds of appeal compendiously as follows:

> "The grounds for appeal are based on misleading statements, statutory limitations under Danish law, the respondent's delay and conduct, misinterpretation of Council Regulation 44/2001, inaccuracies in interest calculations, and issues with the submitted documentation, all underpinned by relevant principles of common law."

29. Firmly and tenaciously though the submissions were pressed on me at the hearing, I am satisfied that there is no merit whatever in them. Mr Turnbull referred me to the 2013 version of CPR Part 74 and Practice Direction 74; and to articles 53 to 55 of the Judgments Regulation specifying the documents the respondent was required to produce when making the registration application.

30. Mr Turnbull rightly submits that the documents produced to Master Cook were those listed at paragraph 18 of Mr Kurmani's witness statement. They were (i) the application notice (ii) the draft order (iii) an authentic copy of the Danish judgment (iv) a certified English translation thereof (v) an "Annex V" certificate of enforceability and (vi) a statement from the respondent's Danish lawyer of the interest due, explaining the interest calculation.

31. The objections raised by the appellants have no substance. They do not dispute that the Danish judgment was given in the terms that are before me. It is clearly authentic. The appellants gave evidence at the trial. They have not impugned the quality of the translation into English. The complaints about the court seal and the use of the wrong logo and absence of an apostille have no merit; the rules do not prescribe use of those particular methods of authentication.

32. The Annex V certificate of enforceability is dated 10 August 2023 and signed by a deputy judge at the Hjorring court. It correctly identifies the Danish judgment and confirms that it is enforceable against the appellants for the

purposes of articles 38 and 58 of the Judgments Regulation. The respondent's Danish lawyer, Mr Jacob Pehrson, explains in his witness statement how he was able to obtain it, as a matter of urgency, on 10 August 2023.

The appellants' public policy objections

33. I also reject the appellants' submissions that the Danish judgment should not be enforceable here because enforcement would be contrary to public policy. Mr Turnbull, for the respondent, reminded me by reference to the European and domestic case law how narrow the public policy exception is. He submitted that it could not possibly be invoked here.

34. I reviewed the scope of the public policy exception in *Lawrenson* at [68]-[79]. I do not repeat that account here. Recognition of the judgment would have to infringe a fundamental principle amounting to a manifest breach of a rule of law regarded as essential in the legal order of the receiving state or of a right recognised as being fundamental within that legal order (*Orams v. Apostolides* [2011] QB 519 (CA and CJEU judgments)).

35. In the present case, the debt created by the Danish judgment is an ordinary judgment debt. There is nothing unusual or exceptional in the circumstances in which the judgment came to be given. Unfortunately, such business failures were all too common at the time. The complaints of impropriety have no substance. The appellants were entitled to relocate to the United Kingdom but, equally, the respondent was entitled to pursue enforcement of the debt here.

When did the Danish law limitation period expire?

36. That brings me to the next issue: whether the limitation period in Danish law had already expired before the registration order was made. On this issue, the parties are one day apart. The appellants submit that the period is 10 years, not 10 years plus one day; the period therefore expired at midnight on 15 August 2023. The respondents say 16 August 2023 counts as part of the 10 year period and that the period expired after, not before, the registration order was made.

37. I start with the relevant provisions in Danish law of the Limitation Act of 2015 (LBK no. 1238 of 9 November 2015) (**the Danish Limitation Act** or **the DLA**). I refer to the English translation, which did not raise any linguistic disputes. It is common ground that the DLA applies to this judgment debt. In chapter 4, by section 5, paragraph 3, the limitation period is 10 years where the existence and amount of a claim have been established by (*inter alia*) a judgment.

38. Chapters 5 and 6 make detailed provision for interruption or provisional interruption of a limitation period in certain cases, but it is not suggested by either side that there was any such interruption here. It is common ground that the 10 year period applies here and that it ran uninterrupted from the date of the Danish judgment, 16 August 2013. I therefore need not set out the detailed provisions in those Chapters.

39. Chapter 7 is entitled "Effects of limitation". By section 23, first subsection, "[u]pon limitation, the creditor loses the right to demand performance".

Subsection 2 provides that "[u]pon limitation of the principal claim, claims for interest and similar payments also expire."

40. Chapter 8 is headed "Deviation from the law, etc". Section 26, first subsection, provides that "[t]he law cannot be deviated from to the detriment of the debtor by prior agreement". That provision is then supplemented by other more detailed related provisions, which I need not set out.

41. Also within Chapter 8, section 27 provides:

> "For deadlines under this law, the month-day corresponding to the day from which the deadline is calculated is included. In the absence of a corresponding day, the deadline expires on the last day of the month.
>
> Subsection 2. If a deadline expires on a weekend, a public holiday, Constitution Day, December 24th, or December 31st, the deadline is extended to the next working day."

42. Neither side suggests subsection 2 is relevant here. I record that Master Cook's registration order was given on a working week day and that subsection 2 is therefore not relevant. The difference between the parties arises from the first subsection. The appellants say that to include 16 August 2023 would be to add an extra day to the 10 year period; and that this would be a deviation from the law "to the detriment of the debtor" within section 26 of the DLA.

43. That interpretation is, however, clearly wrong, as Mr Turnbull correctly submitted. I agree with the opinion of the respondent's Danish lawyer, Mr Pehrson, that the effect of section 27, first subsection, is to count 16 August 2023 as part of the 10 year period. To do so is not a deviation from the law. It *is* the law, as stated in that subsection of section 27.

44. I conclude that the Danish judgment had not yet become unenforceable in Denmark when the registration order was made on 16 August 2023. There were still a few hours left of enforceability in Denmark, up to midnight. I also record that Mr Kurmani properly fulfilled the respondent's duty to make full and frank disclosure by pointing out that issue, and other possible points that could be taken against the respondent, in his witness statement.

45. It follows that the registration order was properly made. The formalities were all correctly observed; the public policy exception did not apply; and the judgment was enforceable in Denmark at the time when the registration order was made. However, that is not the end of the matter. It is clear, in my judgment, that the Danish judgment is not now enforceable in Denmark.

Can the Danish judgment be enforced in England after expiry of the Danish law limitation period?

46. Did the registration order breathe new life into the rapidly expiring judgment debt, making it enforceable here beyond 16 August 2023, though no longer enforceable in Denmark? Such was Mr Turnbull's submission. It was a point properly raised in Mr Kurmani's witness statement which was before Master

Cook and, subsequently, in written representations to this court in July 2024 during the case management of this appeal.

47. In his written skeleton argument, Mr Turnbull did not address this issue in detail; he merely submitted in a single sentence paragraph, without citing authority, that "[t]he expiry of any limitation period in Denmark is irrelevant". He submitted that what mattered was that the registration order was made before expiry of any limitation period for Danish law purposes; noting in his skeleton argument that (as Mr Kurmani had accepted) there was:

> "some uncertainty as a matter of Danish law as to whether the act of filing the Registration Application, or the sealing of the Registration Order, stopped Danish limitation".

48. However, there is no support from the respondent's Danish law expert for the proposition that registration of the Danish judgment outside Denmark stops time running under the DLA. I am satisfied that it does not because, as Mr Pehrson noted, the DLA deals in detail with cases where limitation is interrupted; and registration of a Danish judgment outside Denmark is not one of them. Absent any such express provision, the respondent cannot convincingly dispute the proposition that the Danish judgment has become unenforceable in Denmark.

49. I indicated to Mr Turnbull on the first day of the hearing that he would need to explain to me why expiry of the Danish law limitation period at midnight on 16 August 2023 did not make the Danish judgment unenforceable in England and Wales thereafter, with the registration order becoming inoperative. He did so on the second day of the hearing, making the following submissions (some foreshadowed in Mr Kurmani's written representations in July 2024).

50. Mr Turnbull said expiry of the limitation period was not relevant because the registration order had been made before it expired and the appeal must therefore be dismissed. The analysis ends there, as he put it. As I understood it, his contention was that the court need not and should not concern itself with whether the registration order was now of any value to the respondent. However, noting my concern about that issue, he did address it.

51. He submitted that the effect of registration in our domestic law is to start a six year limitation period running, from 16 August 2023, expiring in August 2030, by section 24(1) of the Limitation Act 1980. Section 24 provides:

> "**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.
>
> (2) No arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due."

52. The argument advanced by Mr Turnbull is that on registration, the Danish judgment came into existence for the first time as a matter of English law; until registration, it had no existence in English law. On registration, it acquired the character of an English law judgment of the High Court given on the date of

registration. Thereupon, it became enforceable for six years under section 24 of the Limitation Act 1980 as an English law judgment like any other.

53. The appellants invited me to reject this analysis; it would give the respondent 16 years in this case to enforce the judgment (or in other cases less, depending on the date of registration). The respondent would obtain a more favourable limitation regime than available to it under the law of the originating state. The appellants stressed that in article 38(1) of the Judgments Regulation it is a judgment given in a member state "and enforceable in that State" that is enforceable in the receiving state.

54. In response to that objection, the respondent submitted again that the Danish law of limitation is not relevant at all; alternatively, that if it is relevant, it is relevant only to enforceability of the Danish judgment and not to the registration thereof; and further, if it were relevant to the enforceability of the Danish judgment, it would be relevant only to its enforceability in Denmark, not in England and Wales.

55. I asked Mr Turnbull what the position would be in a different receiving state, for example France or Germany. As I understood his response, he submitted that it would depend on the domestic limitation laws of the receiving state: the duration of enforceability in the receiving state after expiry of limitation in the originating state is a matter for the domestic law of the receiving state.

56. Mr Turnbull also mentioned section 4 of the Foreign Law Limitation Periods Act 1984 (**the 1984 Act**). The 1984 Act, broadly, applies to determine the limitation regime in "any action or proceedings in a court in England and Wales" (section 1(1)) where a foreign limitation period is relevant. Mr Turnbull rightly pointed out that applying for registration here of a foreign judgment is not "the bringing of proceedings" (section 4(1)).

57. The respondent cited the ECJ's decision in *Hoffmann v. Krieg* Case 145/86, [1988] ECR 645, decided under the Brussels Convention. It concerned the enforceability in the Netherlands of a German court order for payment of maintenance by a separated husband to his wife - both German nationals - after the husband had moved to the Netherlands. He obtained a decree of divorce in the Netherlands (applying German law under Dutch conflict of laws rules). The divorce fell outside the scope of the Brussels Convention and had not been recognised in Germany at the time the national court considered material.

58. On a reference from the Hoge Raad in the Netherlands, the Court of Justice considered the second question asked of it (in the judgment at [7]):

> "… Must Articles 26 and 31 of the Brussels Convention, read together, be interpreted as meaning that the obligation to recognize a judgment given in a Contracting State requires that, because the judgment remains enforceable under the law of the State in which it was given, it is also enforceable in the same cases in the other Contracting State?"

59. The Court explained at [12]:

> "… the national court's second question seeks, in essence, to establish whether a foreign judgment whose enforcement has been ordered in a Contracting State pursuant to Article 31 of the Convention must continue to be enforced in all cases in which it would still be enforceable in the State in which it was given even when, under the law of the State in which enforcement is sought, the judgment ceases to be enforceable for reasons which lie outside the scope of the Convention."

60. The Convention did not apply *inter alia* to the status or legal capacity of natural persons, the Court explained. It answered the second question thus, at [18]:

> "Thus the answer to be given to the national court is that a foreign judgment whose enforcement has been ordered in a Contracting State pursuant to Article 31 of the Convention and which remains enforceable in the State in which it was given must not continue to be enforced in the State where enforcement is sought when, under the law of the latter State, it ceases to be enforceable for reasons which lie outside the scope of the Convention."

Mr Turnbull said that case showed that the impact of a foreign limitation period could not simply be carried over on registration of a foreign judgment here.

61. He accepted that Murray J's decision in *Percival v. Motu Novu LLC*, [2019] EWHC 1391 (QB), at [41], stood as authority that, as Murray J there said: "[a]rticle 38 of the Regulation is limited to judgments enforceable in the Member State in which they are given" and those that are not are "not eligible for registration". Thus, Murray J held, the Master should not have registered an Italian judgment which had been varied on appeal.

62. I interject that *Coursier v. Fortis Bank SA* (1999) Case C-267/97, [1999] ECR I-2543 was also referred to by Mr Kurmani in his witness statement. In *Coursier* (decided under the Brussels Convention on a reference from a Luxembourg appellate court) the Court of Justice decided that a debt arising from a judgment in France could, potentially, be enforced in Luxembourg under article 31 of the Brussels Convention even though it had become unenforceable in France.

63. The debt had become unenforceable in France because of a restriction on creditors' rights resulting from the court supervised liquidation of M. Coursier's business in France. The Coursiers lived in France but he had obtained work in Luxembourg. The judgment creditor successfully sought to attach his salary in Luxembourg. On his appeal, the court in Luxembourg referred a question intended to determine whether the contested judgment, no longer enforceable in France, could be subject to enforcement measures in Luxembourg.

64. At [15], the ECJ noted that the Coursiers did not contend that "the obligation to pay the debt … has been extinguished through payment of the debt or some other cause, such as expiry of a limitation period". At [23], the Court stated in relation to article 31(1) of the Brussels Convention (which is materially the same as article 38(1) of the Judgments Regulation):

> "It is clear from the first paragraph of Article 31, which forms part of those rules, that the enforceability of a decision in the State of origin is a precondition for its enforcement in the State in which enforcement is sought."

65. The Coursiers' immunity from enforcement measures in France did not, however, necessarily extend to other states such as the receiving state, Luxembourg. The Court stated at [28]-[29]:

> "28 Thus, the Court has held that the Brussels Convention merely regulates the procedure for obtaining an order for the enforcement of foreign enforceable instruments and does not deal with execution itself, which continues to be governed by the domestic law of the court in which execution is sought (see *Deutsche Genossenschaftsbank*, cited above, paragraph 18, and Case 145/86 *Hoffmann v Krieg* [1988] ECR 645, paragraph 27).
>
> 29 In those circumstances, it follows from the general scheme of the Brussels Convention that the term 'enforceable' in Article 31 thereof refers solely to the enforceability, in formal terms, of foreign decisions and not to the circumstances in which such decisions may be executed in the State of origin."

66. At [33], the ECJ answered the question asked by the Luxembourg court:

> "The answer to the question submitted must therefore be that the term 'enforceable' in the first paragraph of Article 31 of the Brussels Convention is to be interpreted as referring solely to the enforceability, in formal terms, of foreign decisions and not to the circumstances in which such decisions may be executed in the State of origin. It is for the court of the State in which enforcement is sought, in appeal proceedings brought under Article 36 of the Brussels Convention, to determine, in accordance with its domestic law including the rules of private international law, the legal effects of a decision given in the State of origin in relation to a court-supervised liquidation."

67. The respondent would no doubt submit in relation to *Coursier* that, in line with that reasoning, the question of enforceability after expiry of the relevant foreign limitation period is a matter for English domestic law, including the rules of private international law; and that the governing provision in that regard is, as Mr Turnbull submitted orally, the Civil Jurisdiction and Judgments Order 2001 (as enacted at the relevant time, before January 2015) (**the Judgments Order**).

68. Mr Turnbull points to provisions in Schedule 1 to the Judgments Order (given effect by article 3 thereof) dealing with registration of foreign judgments and interest on judgment debts created by such judgments. Paragraph 2 of Schedule 1 provides:

> "**Enforcement of judgments other than maintenance orders (section 4)**
>
> 2.—(1) Where a judgment is registered under the Regulation, the reasonable costs or expenses of and incidental to its registration shall be recoverable as if they were sums recoverable under the judgment.
>
> (2) A judgment registered under the Regulation shall, for the purposes of its enforcement, be of the same force and effect, the registering court shall have in relation to its enforcement the same powers, and proceedings for or with respect to its enforcement may be taken, as if the judgment had been originally given by the registering court and had (where relevant) been entered.
>
> (3) Sub-paragraph (2) is subject to Article 47 (restriction on enforcement where appeal pending or time for appeal unexpired), to paragraph 5 and to any provision

made by rules of court as to the manner in which and conditions subject to which a judgment registered under the Regulation may be enforced."

69. And, Mr Turnbull points out, paragraph 5 of Schedule 1 makes detailed provision for interest on registered judgments:

> "**Interest on registered judgments (section 7)**
>
> 5.—(1) Subject to sub-paragraph (3), where in connection with an application for registration of a judgment under the Regulation the applicant shows—
>
> (a) that the judgment provides for the payment of a sum of money; and
>
> (b) that in accordance with the law of the Regulation State in which the judgment was given interest on that sum is recoverable under the judgment from a particular date or time, the rate of interest and the date or time from which it is so recoverable shall be registered with the judgment and, subject to rules of court, the debt resulting, apart from paragraph 2(1), from the registration of the judgment shall carry interest in accordance with the registered particulars.
>
> (2) Costs or expenses recoverable by virtue of paragraph 2(1) shall carry interest as if they were the subject of an order for the payment of costs or expenses made by the registering court on the date of registration.
>
> (3) …
>
> (4) [*Subject to an immaterial exception*] debts under judgments registered under the Regulation shall carry interest only as provided by this paragraph."

70. Mr Turnbull also relied on the Court of Appeal's decision in *Cyprus Popular Bank Ltd v Vgenopoulos* [2018] QB 886, in the leading judgment of Flaux LJ at [15], where he emphasised that the United Kingdom was recognised in article 38(2) of the Judgments Regulation as being in a different position from most other member states as it did not have an *exequatur* procedure, so that it is not necessary to apply for a declaration of enforceability under article 38(1); only registration is required under article 38(2).

71. The Court of Appeal's decision was (per Flaux LJ at [49] and [50]) that by virtue of paragraph 2(2) and (3) of Schedule 1 to the 2001 Order, the Cypriot freezing order at issue in the appeal, once registered as a judgment of the High Court, was (see at [50]):

> "as fully effective and enforceable as an English judgment would be, subject only to the claimant not being entitled to take measures of enforcement other than protective measures pending determination of the defendants appeal … ."

72. I turn to my reasoning and conclusions on this issue. I do not accept the suggestion from the respondent that I should leave the issue unaddressed and undecided. It is of the utmost practical importance and may affect the outcome of the appeal. I reject the glib submission that the expiry of the limitation period under Danish law is irrelevant and should be ignored.

73. In my judgment, it is clear from article 38(1) of the Judgments Regulation and its materially identical predecessor in the Brussels Convention, article 31(1), that enforceability of a judgment in the originating state is a pre-condition of recognition (i.e. in the United Kingdom, registration under regulation 38(2)) in the receiving state. That is also confirmed by the reasoning of the Court of Justice in *Coursier* and, closer to home, the decision of Murray J in *Percival*.

74. Second, in my judgment the expiry of a limitation period in the originating state is a matter that affects the enforceability of a judgment and not merely the taking of enforcement *measures* – i.e. execution – in the receiving state. The Court of Justice in *Coursier* at [15] expressly mentioned expiry of a limitation period as a basis for excluding enforceability in a receiving state.

75. Third, I do not accept that the decision in *Hoffmann v. Krieg* is of direct assistance to the respondent or the court in this appeal. *Hoffmann v. Krieg* is not directly in point because the bar to enforceability in that case was nothing to do with expiry of a limitation period in the originating state. The bar to enforceability in the receiving state was the fact that the order sought to be enforced was made outside the scope of the Brussels Convention.

76. I note and accept that following the accession of the United Kingdom to what later became the European Union, on the advent of the Judgments Regulation in 2000 (entering into force in 2001), article 38(2) provided for a modified enforcement regime to apply in the United Kingdom. A declaration of enforceability is not needed in the United Kingdom; instead, the judgment given in the originating state is registered in the relevant part of the United Kingdom.

77. As the preamble to the Judgments Order 2001 (which entered into force in 2002) makes clear, it was enacted by Her Majesty on the advice of the Privy Council under the powers (then) conferred on her by section 2(2) of the European Communities Act 1972. The Judgments Order must therefore be construed in harmony with and not at odds with the Judgments Regulation and with case law of the Luxembourg court interpreting the Judgments Regulation.

78. In the Judgments Regulation, Schedule 1 (given effect by article 3) makes provision for recognition of a judgment given in an originating state by registration only, without the need for a declaration of enforceability. This provision (as explained by Flaux LJ in the *Cyprus Popular Bank* case) is aligned with article 38(2) of the Judgments Regulation making special provision for the United Kingdom.

79. There is no suggestion in article 38, or in the Judgments Regulation, or in any case law, domestic or international, that the special position of the United Kingdom reflected in article 38(2) of the Judgments Regulation, means that the *substantive* law relating to recognition under the Judgments Regulation is different in the United Kingdom from the law in other member states. Article 38(2) merely reflects the specifics of our constitution and that we have different systems of law in different parts of the United Kingdom.

80. It would be surprising if the substantive law were different here, since the Judgments Regulation is a harmonising measure. The Judgments Order should

be construed in a manner that harmonises the law in the United Kingdom with that in other member states, not in a way which sets our law at odds with their law. It is with those propositions in mind that Schedule 1 to the Judgments Order must be interpreted.

81. I note that paragraph 2(2) of Schedule 1 includes the word "originally" in the phrase "as if the judgment had been originally given by the registering court …". The judgment registered in the relevant part of the United Kingdom is of the same force and effect and carries with it the same enforcement powers, as if it had been given by the registering court "originally". That suggests the registering court is deemed to have given the judgment on the date of the original judgment given in the originating state, not on the date of registration.

82. By contrast, paragraph 5(2) of Schedule 1, dealing with interest, does mention the date of registration for the purpose of the running of interest on costs recoverable under paragraph 2(1): those costs "shall carry interest as if they were the subject of an order for the payment of costs or expenses made by the registering court *on the date of registration* (my italics)."

83. I can see no good reason to interpret paragraph 2(2) of Schedule 1 as bringing forward the deemed date of the deemed judgment of the registering court to the date of registration, as Mr Turnbull suggests. He cited no authority, nor any good policy reason to support that interpretation. It conflicts with the sense of the word "originally" and with the principle that the Judgments Order and the Judgments Regulation should be construed in harmony with each other.

84. If my reasoning is correct, the effect of the Judgments Regulation in this case is to treat the registration order made by Master Cook on 16 August 2023 as if it were a High Court judgment given and entered on 16 August 2013. Our six year domestic limitation period is, as it happens, shorter than Denmark's 10 years. I need not decide whether, had the Danish period been shorter than ours, the shorter Danish period or the longer English one would apply.

85. I note that Schedule 1 paragraph 2(3) makes paragraph 2(2) subject to article 47 of the Judgments Regulation (enacting a restriction on enforcement where an appeal in the originating state is pending or the time for such an appeal has not expired); and subject to paragraph 5 (which deals with interest running on a registered judgment after registration here) and to conditions for registration set by rules of court.

86. I accept that paragraph 2(3) does not expressly mention limitation in the originating state; but nor does the Judgments Regulation itself. It has been left to case law, in particular *Coursier* which had already been decided when the Judgments Regulation came into being, to make good the proposition that for a judgment to be enforceable in a receiving state, it must not be barred by expiry of a limitation period in the originating state (see *Coursier* at [15]).

87. The provisions dealing with interest in paragraph 5 of Schedule 1 to the Judgments Order do not, in my judgment, assist the respondent. Interest on the Danish judgment debt is, like the principal judgment debt, governed by Danish law and, specifically, by the DLA which at section 23, subsection 2, provides

(as already stated) that that "[u]pon limitation of the principal claim, claims for interest and similar payments also expire."

88. The legislation and the case law show that two separate concepts must be differentiated from each other. The first is enforceability, i.e. eligibility for recognition in a receiving state; or in the United Kingdom, eligibility for registration. That is governed by EC law, in particular the Judgments Regulation. The second concept is enforcement, i.e. the taking of enforcement measures, also known as execution. That is governed by the domestic law of the receiving state, including its rules of private international law.

89. The non-enforceability in the Netherlands of the German court's maintenance order in *Hoffmann v. Krieg* was a matter of EC law, though it had nothing to do with limitation. The potential availability of execution by attachment of salary in *Coursier* was a matter for Luxembourg domestic law, including its private international law rules; there was no bar to enforceability as a matter of EC law (cf. *Lawrenson*, at [125], citing *Apostolides v. Orams* [2011] [QB] 519 at [69]; and *Lawrenson* at [134], citing *Hoffmann v. Krieg*, at [28]).

90. In the light of the above analysis, I must reject the submission of the respondent that section 24 of the Limitation Act 1980 (**the 1980 Act**) creates a new six year limitation period which starts to run from the date of registration. Section 24 applies to actions brought in England or Wales. The limitation period in this case is governed by the DLA, i.e. by Danish law, because the action was brought in Denmark.

91. Section 24 of the 1980 Act cannot displace the DLA. To allow it to do so would violate the pre-condition in article 38(1) of the Judgments Regulation – enforceability in the originating state - to which Murray J drew attention in *Percival*. Section 24 would not assist the respondent even if it did apply, because the Judgments Order deems the High Court judgment to have been given on the date it was given in the originating state, as I have said.

92. Furthermore, the respondent's analysis would produce anomalous results if it were correct. The duration of enforceability in the receiving state would vary, depending on the length of the period between the judgment in the originating state and the receiving state's recognition order. Here, the period would be stretched to 16 years from the originating state's judgment. I find that proposition unattractive and am reluctant to accept it.

93. I find nothing in Flaux LJ' analysis of the Judgments Order and the Judgments Regulation in the *Cyprus Popular Bank* case which undermines the reasoning I have just outlined. That case was about a freezing order, a measure to preserve property. Enforceability of the Cypriot freezing order in England was not in issue. I find no support in that case for the freezing order being deemed to have been made on the date of registration. There was no temporal or limitation issue.

94. By similar reasoning, I reject the submission of the respondent that the 1984 Act has any relevance. It applies to actions brought in England and Wales in which a foreign limitation period is relevant. Where the claim is brought in a different member state, the Judgment Regulation applies and is the governing instrument;

the 1984 Act is not. Further, the 1984 Act is not relevant because registration of a judgment is not the bringing of proceedings in England and Wales.

Conclusions

95. For all those reasons, I conclude that a debt that is statute barred in the originating state is no more enforceable in the receiving state than a judgment altered on appeal in the originating state, as in *Percival*. The registration order is valid and was properly made but has become worthless in the hands of the judgment creditor because the debt (and interest on it) are statute barred.

96. I am not permitted to revoke the registration order because article 57(1) of the Judgments Regulation provides that:

> "[t]he court with which an appeal is lodged under Article 43 or Article 44 shall refuse or revoke a declaration of enforceability only if enforcement of the instrument is manifestly contrary to public policy in the Member State addressed."

97. Having rejected the public policy arguments, I cannot revoke the registration order. However, the decision, though correct when it was made, is now "wrong" within CPR rule 52.21(3) because of supervening expiry of the Danish limitation period. Under CPR 52.20(1) and (2) I can therefore, without revoking the registration order, vary it to add a declaration that the Danish judgment became statute barred and unenforceable from the start of 17 August 2023.

98. I do not reach that conclusion with any great regret. I do not feel strongly that the appellants have unjustly escaped payment of a due debt. It is true that the debt was due and that it was not paid, but that is always so when a debt becomes statute barred. The appellants are in no better position than any other judgment debtor who benefits from a limitation defence.

99. It would be a more unjust result if the *de facto* limitation period were 16 years from the date of the Danish judgment. I am more comfortable with the appellants benefitting from a limitation defence than I would be with the judgment debtor having to wait for two separate and consecutive limitation periods to expire, as the respondents have suggested.

100. The purpose of limitation provisions is to bring finality and not leave obligations open ended. The respondent chose to wait long before pursuing the appellants in England, despite knowing from the terms of the Danish judgment that they had a residence in London. The respondent could have obtained an alternative service order eight or nine years ago and enforced against the appellants in England at much greater leisure, rather than waiting so long and acting so late.

Disposal

101. I will therefore make an order (i) upholding the registration order but (ii) declaring that its effect expired at midnight on 16 August 2023, the day it was made. The respondents have been vindicated in their insistence that the registration order was validly made and that there is no basis for setting it aside.

But their victory is Pyrrhic because its effectiveness cannot outlast the limitation period applicable to the debt and interest thereon under Danish law.

102. I will hear the parties at a short video hearing or by considering brief written representations on costs and any other consequential matters. Before doing so, I record here a most unhappy feature of this case. The appellants relied on a certain case summary and put it in the lengthy authorities bundle. It was not mentioned in their skeleton argument but was shown to me in oral argument.

103. The difficulty is that the case does not exist. The two page "General Summary" was called "*Flynn v. Breitenbach*" and bore the reference [2020] EWCA Civ 1336, a reference which, it soon became apparent, does not exist in the records of the Civil Division of the Court of Appeal. The two page "summary" was written in a style that made me think the author was a lawyer familiar with the Judgments Regulation, but whose first language is not English.

104. The proposition stated was materially the same as here: a foreign judgment cannot be enforced here after expiry of the limitation period applicable in the originating state; i.e. the point on which the appellants have succeeded. It would be difficult to accept that the author was unaware the case was inauthentic. The appellants said it came to them from a German lawyer (unnamed) who was advising them informally; and that they did not know it was inauthentic.

105. After making enquiries at my request by telephone over the lunchtime adjournment on the first day, they at first did not accept (or could not believe) that it was inauthentic; they assured me it could be found on BAILII; but it could not be found on BAILII or anywhere else. Overnight, they provided a "detailed explanation" in writing, acknowledging that:

> "due to unforeseen difficulties in accessing the judgment, as it appears to be unavailable in publicly accessible free databases and was not located in the Court's own library resources".

106. The summary had originated from a legal source, they repeated in the written explanation:

> "As litigants in person, we relied heavily on the support of our extensive legal network, which includes the law firms involved in our 2009 IPO process. These firms, along with three major banks in London, France, and Sydney, have formed a European business network active since 2009. Due to our long-standing relationships, they generously provided pro bono advisory support for this matter.
>
> This network supplied the Appellants with the presented summary of Flynn v Breitenbach, which was included in our Authorities Bundle. Upon questioning the accuracy of the citation, we were assured that it had been sourced from their internal databases. None of the legal contributors were aware of the judgment's unavailability at the time. We wish to emphasize that, as litigants in person, we would never intentionally bring false evidence to obtain a better position. The citation was included based on widely discussed principles referenced in secondary sources and related judgments that strongly align with the case's known facts. Despite this oversight, the key legal principles underpinning the citation remain well-supported by established case law and statutory interpretation. We

> sincerely regret any inconvenience caused and wish to clarify our argument using alternative authorities."

107. On arrival at court on the second day, I confirmed from my enquiries that the case did not exist. At court, the appellants reluctantly accepted this. Mr Turnbull said it was a matter of great concern and that (as per *Barton v. Wright Hassall*) litigants in person should have no special latitude where they breach the rules of procedure; and this was a very serious breach. The court "may well be suspicious" but he would "go no higher than that".

108. The respondents did not indicate an intention to bring contempt proceedings. Mr Turnbull suggested that the point could be relevant in relation to costs. He did not accept that the appellants were necessarily ignorant of the inauthenticity of the case summary. It stood out from other cases in the authorities bundle.

109. In response, Mr Olsen, with whom Mrs Olsen agreed, said they were not seeking special treatment as litigants in person and no longer sought to rely on the case summary. My note of Mr Olsen's further response reads, according to my note:

> "We have been poorly advised. You can only draw the conclusion that that summary, that it is not authentic. Fully agreed that the court on info currently available not a real case. That is unexcusable it shouldn't have happened."

110. Mrs Olsen added, according my note:

> "Even though we are litigants in person, we are doing our best but we are relying on the help we can get. We need an input and unfortunately this was very bad guidance we received concerning this matter."

111. Mr Olsen added, idiomatically with a Danish inflection: "we excuse to the court". This was clearly his way of saying (not in his native tongue) that the appellants apologised to the court.

112. Mindful of my duty under CPR rule 81.6, I enquired of the Olsens what their personal and family circumstances were. I was told he is 67, she is 63. They have been married for several decades. They have no children. They are unemployed and living at the flat in Guildford, on universal credit. They have applied for jobs, without success. He has had medical issues, with long covid.

113. I have narrowly and somewhat reluctantly come to the conclusion that I should not cause a summons for contempt of court to be issued to the appellants under CPR rule 81.6. I do not think it likely that a judge (whether myself or another judge) could be sure, to the criminal standard of proof, that the appellants knew the case summary was a fake. They may have known but they could not be compelled to answer questions about the identity of the person who supplied it.

114. The appellants are quite elderly. They have in other respects behaved properly during this litigation, observing the usual courtesies and cooperating reasonably well with the respondent's solicitors. They have, fortunately for them, gained no advantage from the case summary because its inauthenticity was patent. The court's resources are stretched. The appellants would be entitled to legal aid, costing the public purse substantially more than it would be likely to recoup.

115. I will, however, keep the point in mind when considering any arguments about costs, if these are not agreed. The appellants' provisional and possible right to some costs (see CPR rule 46.5 and Practice Direction 46) may be impaired and the court is likely to have in mind the provisions in CPR rule 44.2 and 44.11 when considering any issue as to costs, if there is no agreement about costs. The parties will no doubt want to discuss this.