Neutral Citation Number: [2025] EWHC 147 (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: 28/01/2025

Before :

MR JUSTICE KERR

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Between :

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

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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 (2) on Consequential Matters

This judgment was handed down remotely at 3pm on 28 January 2025 by circulation to the parties or their representatives by email and by release to the National Archives.

Mr Justice Kerr :

1. On 16 January 2025, I handed down judgment in writing on the appellants' appeal to this court against an order of Master Cook registering a Danish judgment for the purpose of enforcement of the judgment debt, and interest on it, in England and Wales; and against a supplemental order for costs assessed at £12,500. The citation is [2025] EWHC 42 (KB). This supplemental judgment on consequential matters should be read with that earlier judgment.

2. I am grateful to the parties for their written representations sent at my invitation. The outstanding issues are, first, the form of my order on the appeal; second, whether the costs order below should be altered; and third, the costs of the appeal. Permission to appeal to the Court of Appeal is, rightly, not sought by the respondent; since my decision is itself made on appeal, any application for permission to appeal against it must be made to the Court of Appeal.

3. I have considered the representations about the form of my order. I have drafted an order which takes account of those submissions and embodies my decision in the main judgment. The effect of the order is, as I decided in the main judgment, that the registration order was validly made and is upheld but its effect expired at midnight on the day it was made, 16 August 2023, so that it is worthless in the hands of the respondent.

4. As to the costs order made below, the Judgments Order provides by article 3 and paragraph 2(1) of Schedule 1 that where a judgment is registered under the Judgments Regulation, "the reasonable costs of and incidental to its registration shall be recoverable as if they were sums recoverable under the judgment". The parties disagreed about the impact of that provision, given my decision in the main judgment. I have considered the parties' rival contentions on that point.

5. The appellants submitted that the costs order should be set aside because by reason of expiry of the limitation period there is now no enforceable judgment debt and therefore no "sums recoverable under the judgment". The respondent submitted that the costs order should remain intact: the Danish judgment was validly registered and the reasonable costs of and incidental to applying for its registration remain recoverable; expiry of the limitation period is irrelevant.

6. I think the respondent's submission is to be preferred. It was entitled to apply to register the Danish judgment and had to do so in haste because of the imminent expiry of the limitation period. The respondent was aware that could prevent enforcement and told the Master so; but that did not mean it was unjustified in attempting to obtain an order that might be effective as a means of enforcing payment of the debt; even though it has proved ineffective.

7. The remaining issue is what order I should make as to the costs of the appeal to this court. I have considered carefully the parties' representations on this issue and the relevant costs provisions in the Civil Procedure Rules, which are CPR rule 46.5 and Practice Direction 46; CPR rule 44.2 and CPR rule 44.11. The primary position on each side was to claim costs against the other and to submit that they should not have to pay any costs. Each side produced a costs schedule.

8. Each side claimed to be the successful party. The respondent has succeeded in upholding the validity of the registration order. The appellants have succeeded in securing an order which renders it worthless in the respondent's hands. In my judgment, the appellants are, in substance, the successful parties. It would be arid formalism and elevate form over substance to suggest that the respondent has succeeded in its enterprise, which was to enforce the debt.

9. I have to have regard to the conduct of the parties. Neither party alluded to their own conduct in their written representations and both sides alluded to the conduct of the other side. In my judgment, some costs were incurred on both sides as a result of the other side's conduct, but the shortcomings of the respondent's conduct were more venial and much less serious than the shortcomings of the appellants' conduct during the appeal process.

10. On the respondent's side, it acted impeccably at first, complying faithfully with the duty of full and frank disclosure including citing to Master Cook (through Mr Kurmani's witness statement) the *Coursier* case which has proved significant. However, the respondent fell short when it later failed to inform Garnham J that permission to appeal was not required. That was unfortunate especially as the appellants were unrepresented. Some costs were wasted.

11. On the appellants' side, first, their documents were unnecessarily prolix and repetitive. The respondent has shown instances of unnecessary document filing and I noted in the main judgment that the arguments were long winded and repetitive. Some allowance must be made for their lack of legal training, but they are educated and intelligent and had access to informal legal advice. Costs were incurred because of needless repetition of the same points many times.

12. That shortcoming in the appellants' conduct of the appeal explains, incidentally, the very high number of hours of work recorded in the appellants' costs schedule. If I were willing to award any costs in favour of the appellants, I would substantially reduce, or encourage a costs judge on detailed assessment to reduce, the permitted number of hours for assessment purposes.

13. Next, the appellants placed before the court a so-called authority which, it turned out, did not exist. I have explained the circumstances more fully at the end of my main judgment. I will not repeat that account here. It was bad misconduct even on the basis that, as I assume in their favour, the appellants were unaware the case was not authentic. Even inadvertent misleading of the court is very serious because it strikes at the heart of the judicial process.

14. As a result, some additional costs were incurred because the hearing was prolonged and the respondent had to consider its position. The court's stretched resources were stretched further because I had to enquire about the authenticity of the case cited and I had to consider whether the court should summons the appellants for contempt under CPR rule 81.6. In the event I narrowly decided not to do so but the court's process was significantly disrupted.

15. Weighing and balancing these considerations, I have come to the conclusion that I should make no order as to the costs of the appeal, apart from upholding the Master's order for payment of the assessed sum of £12,500 in respect of the

costs below. The respondent should not have its costs because in substance it has failed. I do not think it would be right to reward that failure by an award of costs against the appellants in the appeal. The appellants should be deprived of their costs because their conduct was bad in the two respects I have mentioned.