Westacre Investments Inc *v* The State-Owned Company Yugoimport-SDPR (also known as Jugoimport-SDPR)
[2007] 1 SLR(R) 501; [2006] SGHC 210

Case Number	: Originating Summons No 1311 of 2004 (Registrar's Appeals Nos 8 and 61 of 2006)
Decision Date	: 28 November 2006
Tribunal/Court	: High Court
Coram	: Kan Ting Chiu J
Counsel Name(s)	: Khoo Boo Jin and Tan Hsuan Boon (Wee Swee Teow & Co) for the judgment creditor; Lok Vi Ming SC, Kirindeep Singh and Govindarajalu Asokan (Rodyk & Davidson), Gabriel Peter and Calista Peter (Gabriel Law Corporation) for the judgment debtor.
Parties	: Westacre Investments Inc — The State-Owned Company Yugoimport-SDPR (also known as Jugoimport-SDPR)

*Civil Procedure – Foreign judgments – Enforcement – Registration – Whether foreign judgment that can no longer be sued on in country of origin may be registered in Singapore – Whether just and convenient for court to enforce foreign judgment in Singapore – Whether delay in enforcing judgment justified – Whether court having power to restrict method by which judgment to be registered may be enforced – Sections 3(3)(*a*) and 3(3)(*b*) Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed)*

Civil Procedure – Jurisdiction – Inherent – Whether court having discretion to direct that foreign judgment to be registered may only be enforced by certain method – Order 92 rr 4 and 5 Rules of Court (Cap 322, R 5, 2006 Rev Ed)

*Words and Phrases – "In so far only as relates to execution" – Section 3(3)(*b*) Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed)*

Words and Phrases – "Just and convenient" – Section 3(1) Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed)

Facts

On 28 February 1994, in arbitration proceedings before the International Chamber of Commerce, a state-owned company in Serbia, Yugoimport-SDPR ("the judgment debtor"), was held to be liable to pay Westacre Investments Inc ("the judgment creditor") certain sums with interest. In 1995, the judgment creditor commenced proceedings

in the UK to enforce the award. In 1996, the judgment creditor filed a common law action in England on the award itself, as distinct from seeking leave to enforce the award. The two actions were consolidated and in 1998, the High Court (in the UK) ordered that judgment be entered against, *inter alia*, the judgment debtor ("the English judgment") but execution on the judgment was stayed pending appeal. After the UK Court of Appeal had dismissed the appeal and the House of Lords had refused leave to appeal, in 1999 the UK Court of Appeal lifted the stay of execution of the judgment. The judgment creditor then took steps to enforce the judgment in England.

On 5 October 2004, the judgment creditor applied for, and obtained, an order to have the English judgment registered in Singapore pursuant to the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) ("RECJA"). In December 2004, the judgment debtor received notice of the registration and on 2 June 2005 applied to set aside the registration. The assistant registrar dismissed the application, though she added the restriction that the registration would be "for execution by way of garnishee proceedings only". The judgment debtor appealed.

Counsel for the judgment debtor made five arguments on appeal, namely: (a) that the application for registration was out of time; (b) that the English judgment was "dead" since, according to English law, the action on which the judgment was obtained had not been brought within six years; (c) that the English judgment constituted an implied debt under Singapore law and was accordingly time-barred; (d) that, in any event, the judgment creditor required leave from the English courts to enforce the judgment before seeking registration in Singapore; and (e) that even if the English judgment was not "dead" or time-barred, it was not just and convenient for it to be registered in Singapore.

Held, setting aside the registration of the judgment:

(1) The judgment debtor's argument that the English judgment was "dead", that is, as the judgment debt could not be sued upon again after six years under English law, then, by analogy, the judgment debt could not be registered in Singapore as a foreign judgment, rested on the premise that under s 3 of the RECJA a foreign judgment could not be registered in Singapore if it could not be sued on in the country of origin. Such an argument was defective because it was confused over whether English law or Singapore law governed the registration. A court in Singapore should not be applying English law but the Limitation Act (Cap 163, 1996 Rev Ed), which did not set a time limit on applications to register foreign judgments: at [13] and [14].

(2) Although the judgment had been registered well after the usual 12-month period for registration, as there was no time limit for such applications it could still be made, though the onus was on the judgment creditor to establish that it was just and convenient that the judgment be registered despite the delay. In deciding whether to allow an application to register a judgment, all the relevant factors had to be looked at, particularly the reasons for the delay, and not just the prejudice to the judgment creditor. The reason for the delay and the prejudice that the judgment debtor would suffer formed a proper basis for a decision whether it was just and convenient to allow registration: at [17], [18], [27] and [29].

(3) As both an application to issue a writ of execution after six years and an application to register a judgment after 12 months were applications that enabled a judgment creditor to take steps towards the enforcement of a judgment out of time, the rules established in English decisions for leave to issue a writ of execution out of time were relevant and applicable to late applications for registration. Three rules could be drawn from those decisions, namely: (a) that leave to execute would generally not be given after six years had elapsed from the date of judgment; (b) that the onus was on the judgment creditor to justify an extension of time; and (c) that in deciding whether to extend time, the court would consider the reason for the judgment creditor's delay and the prejudice

that an extension of time might have on the judgment debtor. In applying these principles to applications for the registration of judgments under the RECJA, the 12-month period specified therein would apply instead of a six-year period: at [37] to [39].

(4) In this case, the delay in registering the English judgment had been substantial. The judgment creditor gave two reasons for not taking action in Singapore earlier. First, it had been deceived by the judgment debtor as to its poor financial condition; and second, the state of war, bloodshed, political turmoil and instability between 1997 and 2002 in Yugoslavia had made a recovery action impractical. Neither reason justified the delay in registration. In relation to the first reason, there was no evidence that the judgment creditor had reposed trust in the judgment debtor. In relation to the second, there was no suggestion that any recovery action was attempted or thwarted before 2002, or thereafter up to 2004 when the application to register the judgment in Singapore was made. The judgment creditor's further contention that it had not been aware that the judgment debtors held shares in a Singapore company since it would not have been possible to approach the Serbian authorities with a specific query about the judgment debtor's shareholdings was without merit, since the judgment creditor needed to do more than to aver to its opinion that a search could not be done. As the judgment creditor had given no valid reasons for the delay in applying for registration, it was not just and convenient that the judgment be registered despite the delay: at [40], [43] to [50], [52] and [72].

(5) Certain inevitable forms of prejudice against judgment debtors resulting from the registration of foreign judgments (such as the extension of the territorial jurisdiction for the enforcement of the judgment to Singapore and the fact that the enforceability of the judgment was reckoned from the date of registration instead of the date of judgment) should not be strong factors against registration, otherwise no registration would be possible. Having said that, the period of the extension of the enforceability period, as distinct from an extension *per se*, should still be taken into consideration: at [56] and [57].

(6) By the time the judgment creditor had filed its application to register the English judgment in Singapore, more than six years had elapsed from the date when the judgment was obtained. In England, under O 46 r 2(1)(*a*) of the Rules of the Supreme Court 1965 (SI 1965 No 1776), a writ of execution to enforce a judgment or order could not be issued without the leave of court where six years or more had elapsed since the date of the judgment or order. The position was the same under O 46 r 2(1)(*a*) of the Singapore Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules"). However, under s 3(3)(*a*) of the RECJA, when a judgment was registered it had the same force and effect as if it had been obtained upon the date of registration. Thus the effect of s 3(3)(*a*) in this case was that no leave was required for the issue of a writ of execution in Singapore upon the English judgment once it had been registered, as the six-year period from the date of registration of the judgment had not elapsed. This prejudiced the judgment debtor in a manner that was not an inevitable consequence of registration. Thus, when it occurred, such prejudice had to be taken into account in deciding whether registration was to be allowed: at [53] to [55], [57].

(7) By imposing the restriction that the registration of the English judgment would be "for execution by way of garnishee proceedings only", the assistant registrar appeared at first sight to have averted the prejudice to the judgment debtor. As no leave was necessary for garnishee proceedings in England after six years, the restricted registration of the judgment in Singapore did not place the judgment debtor in a worse position. However, s 3(3)(*b*) of the RECJA did not empower the court to impose the restriction. If a judgment deserved to be registered, it should be registered with full effect. Conversely, if the judgment did not deserve to be registered because registration would result in prejudice to the judgment debtor, it should not be registered in a restricted form. Neither could O 92 r 4 and O 92 r 5 of the Rules be invoked to impose such a restriction since their invocation could not be justified as being necessary to prevent injustice or to prevent an abuse of the process of the court, and was not a necessary incidental or consequential order to give effect to a registration which, when approved,

was intended to be effective without restriction. On the facts, the prejudice that the registration of the English judgment would bring on the judgment debtor was a further factor that militated against registration: at [58] to [61], [64], [69], [70] and [72].

Case(s) referred to

Cheah Theam Swee, Re*;* ex parte *Equiticorp Finance Group Ltd* [1996] 1 SLR(R) 24; [1996] 2 SLR 76 (folld)

Duer v Frazer [2001] 1 WLR 919 (refd)

Dupleix v De Roven (1705) 2 Vern 540; 23 ER 950 (refd)

Edwards & Co v Picard [1909] 2 KB 903 (folld)

Ezekiel v Orakpo [1997] 1 WLR 340 (refd)

Grant v Easton (1883) 13 QBD 302 (refd)

Lowsley v Forbes [1999] 1 AC 329 (refd)

National Westminster Bank plc v Powney [1991] Ch 339 (refd)

Patel v Singh [2002] EWCA Civ 1938 (refd)

Quinn v Pres-T-Con Ltd [1986] 1 WLR 1216 (not folld)

W T Lamb & Sons v Rider [1948] 2 KB 331 (refd)

Westpac Banking Corporation v Szentessy (1985) 65 ACTR 39 (not folld)

Yong Tet Miaw v MBF Finance Bhd [1992] 2 SLR(R) 549; [1992] 2 SLR 761 (folld)

Legislation referred to

Limitation Act (Cap 163, 1996 Rev Ed) s 6(1)(*a*) (consd)

Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) ss 3(1), 3(3)(*a*), 3(3)(*b*) (consd);
s 3(2)

Rules of Court (Cap 322, R 5, 2006 Rev Ed) O 92rr 4, 5 (consd);
O 46r 2(1), O 67r 3(1)(*c*)

Judicature Act 1873 (c 66) (UK) s 25(8)

Limitation Act 1939 (c 21) (UK) s 2(4)

Limitation Act 1980 (c 58) (UK) s 24(1)

Rules of the Supreme Court 1965 (SI 1965No 1776) (UK) O 46r 2(1)(a)

[Editorial note: The appeal to this decision in Civil Appeal No 141 of 2006 was allowed by the Court of Appeal on 30 December 2008. See [2009] 2 SLR(R) 166.]

28 November 2006

Judgment reserved.

Kan Ting Chiu J:

1 This is an interesting case arising from the registration in Singapore of an English judgment obtained by Westacre Investments Inc, a company incorporated in Panama ("the judgment creditor") against Yugoimport-SDPR ("the judgment debtor"), a state-owned company in the former Yugoslavia, now in Serbia.

2 There is an eventful background to the judgment creditor's claim against the judgment debtor, the highlights of which are these:

(a) In 28 February 1994, in arbitration proceedings before the International Chamber of Commerce ("ICC") held in Geneva, Switzerland, the ICC issued an award whereby the judgment debtor was held, jointly and severally with another party, a bank, to be liable to pay the judgment creditor US$50,010,093.36, £1,029,629.37 and interest.

(b) The judgment debtor and the bank appealed against the award, but the appeal was dismissed by the Swiss Federal Tribunal on 30 December 1994.

(c) In 1995 the judgment creditor commenced proceedings under the UK Arbitration Act 1975 (c 3) and the UK Arbitration Act 1950 (c 27) to enforce the award.

(d) In 1996 the judgment creditor filed an action in England at common law on the award itself, as distinct from seeking leave to enforce the award.

(e) The two actions were consolidated for hearing before the High Court of England. On 13 March 1998, the High Court ordered that judgment be entered against the judgment debtor and the bank jointly and severally for £41,584,488.86 but execution on the judgment was stayed pending appeal.

(f) The judgment debtor and the bank appealed against the order of the High Court, but the appeal was dismissed by the Court of Appeal on 12 May 1999, and the House of Lords refused leave to appeal on 20 October 1999.

(g) On 15 November 1999, the Court of Appeal lifted the stay of execution of the judgment.

3 After the stay was lifted, the judgment creditor took steps to enforce the English judgment in England. In enforcement proceedings between 1999 and 2004, it recovered a part of the judgment debt.

4 However the judgment creditor did nothing towards the enforcement of the English judgment in Singapore till 5 October 2004 when it applied for and obtained an order to have the judgment registered under s 3 of the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) ("RECJA").

5 In December 2004, the judgment debtor received notice of the registration, and it applied to set aside the registration on 2 June 2005. The judgment debtor's application was heard before an assistant registrar. The judgment debtor's application proceeded on two main fronts, firstly, that the application to register the judgment was time-barred under s 6(1)(*a*) of the Limitation Act (Cap 163, 1996 Rev Ed), and secondly, that the judgment creditor's application to register the judgment was lacking in merits.

6 The judgment debtor's arguments did not find favour with the assistant registrar who heard the application. The hearing proceeded in two parts. The limitation issue was argued as a preliminary point, and when that failed, the merits of the application were argued and the judgment debtor also failed on this issue. The judgment debtor filed separate appeals against each of the assistant registrar's rulings. When the appeals came before me, the issues were vigorously argued again.

7 At this stage, it is useful to set out the main statutory provisions which have to be considered. Sections 3(1), 3(2) and 3(3) of the RECJA provide that:

> **3**.— (1) Where a judgment has been obtained in a superior court of the United Kingdom of Great Britain and Northern Ireland the judgment creditor may apply to the High Court at any time within 12 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 High Court may, if in all the circumstances of the case it thinks it is just and convenient that the judgment should be enforced in Singapore, and subject to 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;
>
> (*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;

(*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;

(*d*) the judgment was obtained by fraud;

(*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 upon 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.

8 On the question of limitation, s 6(1)(*a*) of the Limitation Act stipulates that:

6.—(1) Subject to this Act, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:

(*a*) actions founded on a contract or on tort;

…

and s 24(1) of the Limitation Act 1980 (c 58) of England states that:

[a]n action shall not be brought upon any judgment after the expiration of six years from the date on which the judgment became enforceable.

9 Counsel for the judgment debtor made the following arguments in the appeal:

(a) The application for registration was out of time.

(b) The English judgment is, by the judgment debtor's term, dead, because "[u]nder section 24(1) [of the Limitation Act 1980] an action upon a judgment (or, in this case, an application to register a foreign judgment) must be brought within six (6) years".

(c) The English judgment constituted an implied debt under Singapore law, and an action on the implied debt is time-barred under s 6(1)(*a*) of the Limitation Act.

(d) If the English judgment was not time-barred for enforcement, the judgment creditor needed leave from the English courts to enforce the judgment before seeking registration in Singapore.

(e) Even if the English judgment is not dead or time-barred, and no leave is required from the English courts, it was not just and convenient that it be registered in Singapore.

The first four arguments raised limitation issues, and the fifth argument addressed the merits of the judgment creditor's application to register the judgment.

10 The judgment debtor based its "dead judgment" argument on the proposition that the right to sue on a judgment is distinct from the right to enforce execution on a judgment. This proposition derives its authority from the decision of the English Court of Appeal in *W T Lamb & Sons v Rider* [1948] 2 KB 331 ("*Lamb*"). Scott LJ considered the effect of s 2(4) of the Limitation Act 1939 (c 21) (the precursor of s 24(1) of the Limitation Act 1980) and concluded at 337 that:

> … the right to sue on a judgment has always been regarded as a matter quite distinct from the right to issue execution under it and that the two conceptions have been the subject of different treatment. Execution is essentially a matter of procedure – machinery which the court can, subject to the rules from time to time in force, operate for the purpose of enforcing its judgments or orders.

and in the House of Lords' decision in *Lowsley v Forbes* [1999] 1 AC 329 at 342 ("*Lowsley*"), Lord Lloyd of Berwick stated expressly in the context of the Limitation Act 1980 that:

> "[a]ction" in section 24(1) means a fresh action and does not include proceedings by way of execution.

11 Further explanation on the effect of s 24(1) is found in Andrew McGee's *Limitation Periods* (Sweet & Maxwell, 4th Ed, 2002) where the author explained in para 17.003:

> Section 24 of the 1980 Act provides that no action shall be brought upon a judgment more than six years after the date on which it became enforceable. The practice of bringing an action on a judgment was common in the days when the common law presumption was that a judgment was satisfied after a year and a day if no execution had been issued. In such cases the only way to "enforce" the judgment was by an action of debt upon it. Even today bringing a second action in this way is a matter of right, although the court may decline to give judgment in the second action if it regards it as an abuse of process. In determining whether it is an abuse of process, the availability of execution is a relevant factor. … [footnotes omitted]

And in para 17.005 he said:

> It is essential to understand that this section applies only to the process of bringing an action upon a judgment. It does not extend to seeking execution of a judgment: the latter is a purely procedural step, and is not an "action" within the meaning of the 1980 Act. The provision is of only very limited importance at the present day, since the bringing of an action upon a judgment is rare: the most common example at the present day is where a foreign judgment is not registrable because there are no reciprocal arrangements between England and the jurisdiction where the judgment was given. … The House of Lords held [in *Lowsley v Forbes*] that the word "action" in section 24(1) of the 1980 Act meant a fresh action, and did not include proceedings by way of execution. Accordingly, the section did not bar execution of a judgment after six years, but only barred the bringing of a fresh action on the judgment. [footnotes omitted]

12 What follows from these statements? Under the Limitation Act 1980, the judgment debt cannot be the subject of a fresh action after six years. But that being an English act, it does not apply directly to the present application to register the judgment in Singapore.

13 If the judgment was entirely spent in England, *eg*, a memorandum of satisfaction has been entered against it, it may be argued that there is nothing left of it to be registered under s 3 of the RECJA. However, the judgment debtor's case was not pitched at that level; its argument was that as the judgment debt cannot be sued on again after six years under English law, then by analogy, the judgment debt cannot be registered abroad as a foreign judgment. No support from any statutory, judicial or other source was cited to establish this extended effect.

14 That reasoning rests on the premise that under s 3 of the RECJA, a foreign judgment cannot be registered in Singapore if it cannot be sued on in the country of origin. The defect in this argument is that it is confused over whether English law or Singapore law governs the registration. A court in Singapore in deciding whether to register an English judgment should not be applying s 24(1) of the Limitation Act 1980. The limitation statute to be applied is the Limitation Act, which does not set a time limit on applications to *register* foreign judgments.

15 The Limitation Act imposes a time limitation when a party seeks to *sue* on a foreign money judgment in Singapore. Such an action would be a claim in contract as a foreign money judgment creates an implied contract by the judgment debtor to pay the judgment sum to the judgment creditor, as has long been established by *Dupleix v De Roven* (1705) 2 Vern 540; 23 ER 950 and *Grant v Easton* (1883) 13 QBD 302. In such a situation, s 6(1)(*a*) of the Limitation Act would apply and extinguish the right to sue when six years have elapsed from the date of judgment.

16 Whether the action in Singapore is to register the English judgment, or to sue upon it, s 24(1) of the Limitation Act 1980 does not apply, and there is no basis for the judgment debtor's contention.

Whether the application can be made

17 The judgment was registered well after the usual 12-month period for registration provided in s 3(1) of the RECJA. The provision allows older judgments to be registered if "it is just and convenient that the judgment should be enforced in Singapore". There is no time limit for such applications, so while the judgment creditor's application in this case is much delayed, it can still be made.

18 Where the judgment creditor has been slow to take action to register the judgment, the onus is on it to establish that it is just and convenient that the judgment be registered despite the delay.

19 A delay may sometimes be unavoidable. A judgment is not registrable under the RECJA immediately after it is obtained. Section 3(2)(*e*) of the RECJA provides that a judgment shall not be registered if 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. The registration cannot proceed even without the judgment debtor having to satisfy the court that the judgment is under appeal, or that it may be appealed against. Order 67 r 3(1)(*c*) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) requires the applicant for registration to state by affidavit that the judgment does not fall within any of the cases in which a judgment may not be registered under s 3(2) of the Act. This would be a valid reason for a delay.

20 In the present case, the 12-month period ran out on 13 March 1999 although the judgment creditor could only commence registration proceedings in Singapore at the earliest on 20 October 1999, when the House of Lords refused the judgment debtor leave to appeal. That would justify a delay up to 20 October 1999. But the application was filed much later on 5 October 2004 when it was more than six and a half years after obtaining judgment on 13 March 1998 or two weeks short of five years after leave to appeal was refused on 20 October 1999.

Whether it is just and convenient to register the judgment

21 "Just and convenient" is not a term of precision. However, it has received the benefit of judicial construction. The Court of Appeal in *Yong Tet Miaw v MBF Finance Bhd* [1992] 2 SLR(R) 549 recognised that those words in s 3(1) of the RECJA do not give an untrammelled discretion to the courts, and adopted the construction of Fletcher Moulton LJ in *Edwards & Co v Picard* [1909] 2 KB 903 of the term "just or convenient" in s 25(8) of the Judicature Act 1873 (c 66) to be similar to "where it is practicable and the interests of justice require of it" (at 907).

22 Two cases relating to the late registration of foreign judgments were cited by counsel. One was the Privy Council decision in *Quinn v Pres-T-Con Ltd* [1986] 1 WLR 1216 ("*Quinn*"). In this case, a judgment was obtained from the High Court of England on 22 October 1975 arising from a fatal industrial accident.

23 Subsequently, an application was made to register the judgment in Trinidad and Tobago under s 3 of the Judgments Extension Ordinance which reads (see *Quinn* at 1219):

> Where a judgment has been obtained in a superior court in the United Kingdom, the judgment creditor, on production of a certified copy of the judgment, may apply to the Supreme Court, at any time within 12 months after the date of the judgment, or such longer period as may be allowed by the court, to have the judgment registered in the court, and on any such application the court may, if in all the circumstances of the case it thinks it is just and convenient that the judgment should be enforced in the colony, and subject to the provisions of this Ordinance, order the judgment to be registered accordingly.

The application was made on 27 October 1976, *ie*, a year and five days after the judgment. The application was granted. An application to set aside the registration was dismissed, but an appeal to the Court of Appeal succeeded, and the registration was set aside. The matter then went on appeal to the Privy Council.

24 The appeal was allowed, and leave to register the judgment was restored. Lord Brandon of Oakbrook who delivered the decision of the Board held at 1222:

> There was no evidence to show that the expiry of the extra five days had caused, or could conceivably have caused, any prejudice of any kind to the second defendants. That being so, the only way in which Warner J. [the judge who dismissed the application to set aside] could properly have exercised his discretion was by allowing the plaintiff the extra five days. Any decision by him not to do so would, in the circumstances of the case, have been plainly wrong.

His Lordship made no reference to any reason that may have been given for the delay in the application to register the judgment.

25 The second case is a decision of the Supreme Court of the Australian Capital Territory, *Westpac Banking Corporation v Szentessy* (1985) 65 ACTR 39. This was a case relating to an application made under s 21 of the Service and Execution of Process Act 1901 (Cth), which is not set out in the report, to have a judgment obtained in Victoria registered in the Australian Capital Territory. The brief report discloses that under the Act the judgment should have been registered in 12 months, but there is no indication how late the application was. In the short judgment of the court, Blackburn CJ allowed the application, stating at 40:

> [L]eave should be given unless it appears to the court that there is some special reason why it should not give leave …

26 *Quinn*, a Privy Council decision on a provision of an act which is similar to s 3 of our RECJA, would normally be regarded as authoritative and persuasive. However, with great respect, I am unable to take the approach taken by Lord Brandon. In a situation where a party needs a court's leave to do anything, the onus is on that party to satisfy the court that it is entitled to the leave, *eg*, that the application to register is made within the 12-month period, or that it has presented a case on which the court can exercise its discretion, despite the party's failure to apply within 12 months, to grant leave to register. For the same reason, I will not adopt Blackburn CJ's approach.

27 A court in deciding whether to allow an application to register a judgment should not only look at the prejudice to the judgment debtor. It should look at all relevant factors, particularly the reasons for the delay, in addition to the prejudice to the judgment creditor.

28 The starting point must be the delay. If an applicant comes before me to apply for leave to register a judgment out of time, and offers no reason other than that the judgment debtor will not suffer prejudice, I will be very reluctant to grant the application.

29 Where a good reason for the delay is given, *eg*, that registration was not possible under s 3(2)(*e*) of the RECJA read with O 67 r 3(1)(*c*) of the Rules of Court, as the judgment is still under appeal during the 12-month period, or the judgment creditor had not applied for registration during that period because of the judgment debtor's broken promise to make payment after that period, that would carry weight. The reason for the delay and the prejudice that the judgment debtor would suffer would form a proper basis for a decision whether it is just and convenient to allow registration.

30 I find support from another line of cases cited to me. These are English decisions for leave to issue a writ of execution out of time. Under O 46 r 2(1)(*a*) of the Rules of the Supreme Court 1965 (SI 1965 No 1776, as amended) (which is similar to O 46 r 2(1) of our Rules of Court), a judgment creditor must obtain the leave of court to issue a writ of execution where six years have elapsed from the date of the judgment.

31 In *National Westminster Bank plc v Powney* [1991] Ch 339, the bank was a mortgagee of a lodge and a field owned by the defendant. When the defendant failed to make payment to the bank, the bank obtained a judgment on 25 September 1980 against the defendant for £20,000 and for the defendant to give up possession of the lodge. No payment was made, and in November 1985 the bank obtained a writ for possession which was not executed as the defendant applied to set it aside. The writ was stayed pending the disposal of the defendant's application, but the hearing of that application was not heard for more than two years for reasons beyond the control of the parties. In October 1988, the writ was set aside on the ground that the renewal of it more than six years after 1980 was barred by s 24 of the Limitation Act 1980.

32 The bank appealed against the decision. The Court of Appeal allowed the appeal. Slade LJ in delivering the judgment of the court held at 361:

> It is in our judgment a cardinal principle of procedural law that no party should suffer unnecessarily from delay which is not his fault but rather a fault in the administration of justice. It is an unfortunate but unavoidable fact that courts cannot hear and determine every application on the day when it is first made.

He continued, at 363:

> It is, however, necessary to bear in mind that six years have elapsed since the 1980 order was made. The right to sue on it as a judgment, for monetary relief, is time barred unless there has been part payment or an appropriate monetary acknowledgment. In many, perhaps most, cases this might be a powerful reason for refusing, as a matter of principle, leave to issue a fresh warrant for possession. … But on the particular facts of this case, which we hope are exceptional, it would not be right to refuse leave as a matter of discretion on that ground.

33 In *Duer v Frazer* [2001] 1 WLR 919, the judgment creditor obtained a judgment against the judgment debtor in Germany in March 1984, and registered it in England four months later. The German judgment was enforceable for 30 years. In 1988 the judgment creditor employed inquiry agents to trace the judgment debtor and identify assets on which the judgment could be executed. The agents discovered the judgment debtor living on a Caribbean island. However, the judgment creditor did nothing till 2000, when she applied for leave to issue execution on the judgment under O 46 r 2 of the Rules of the Supreme Court, as more than six years had elapsed since the date of the judgment. A master granted leave, then revoked it and the matter came on appeal before Evans-Lombe J in the High Court.

34 The learned judge dismissed the appeal and ruled at [25] of his judgment:

> [T]he court would not, in general, extend time beyond the six years save where it is demonstrably just to do so. The burden of demonstrating this should, in my judgment, rest on the judgment creditor. Each case must turn on its own facts but, in the absence of very special circumstances such as were present in *National Westminster Bank plc v Powney* [1991] Ch 339, the court will have regard to such matters as the explanation given by the judgment creditor for not issuing execution during the initial six-year period, or for any delay thereafter in applying to extend that period, and any prejudice which the judgment debtor may have been subject to as a result of such delay including, in particular, any change of position by him as a result which has occurred. The longer the period that has been allowed to lapse since the judgment the more likely it is that the court will find prejudice to the judgment debtor.

35 The Court of Appeal addressed the same question in *Patel v Singh* [2002] EWCA Civ 1938. In this case, the judgment creditor obtained judgment in September 1992. The judgment creditor obtained a writ of *fieri facias* in July 1994 but was unable to enforce it as the judgment debtor was working in Germany. In May 2002 the judgment creditor applied for permission to issue a writ of execution under O 46 r 2(1)(*a*) of the Rules of the Supreme Court on the ground that she had recently come into contact with the judgment debtor.

36 A master refused permission but a judge granted leave on appeal, and the matter went before the Court of Appeal. Peter Gibson LJ who delivered the judgment of the court dealt with the effect of O 46 r 2(1)(*a*) of the Rules of Supreme Court. He referred to *National Westminster Bank plc v Powney* (*supra*[31]) and *Duer v Frazer* (*supra*[33]) and concluded at [21] of his judgment that:

> [t]he policy of the rule seems to me to be that ordinarily after six years permission will not be given and that is underlined by the provisions of Order 46 rule 4(2), requiring the judgment creditor to explain his delay. In contrast there is no rule that the judgment debtor is to file evidence to state what prejudice, if any, he has suffered by the delay. In my judgment, therefore, consistently with that what this court said in Powney, the court must start from the position that the lapse of six years may, and will ordinarily, in itself justify refusing the judgment creditor permission to issue the writ of execution, unless the judgment creditor can justify the granting of permission by showing that the circumstances of his or her case takes it out of the ordinary. That may be done by showing the presence of something in relation to the judgment creditor's own position, or, as Sir Anthony Evans suggested in the course of the argument, in relation to the judgment debtor's position. Thus the judgment creditor might be able to point, for example, to the fact that for many years the judgment debtor was thought to have no money and so was not worth powder and shot but that, on the judgment creditor winning the lottery or having some other change of financial fortune, it has become worthwhile for the judgment creditor to seek to pursue the judgment debtor.

He allowed the appeal, and restored the master's order.

37 Three rules can be drawn from the decisions:

> (a) Generally, leave to execute will not be given after six years have elapsed from the date of judgment.
>
> (b) The onus is on the judgment creditor to justify an extension of time.
>
> (c) In deciding whether to extend time, the court will consider the reason for the judgment creditor's delay and the prejudice an extension of time may have on the judgment debtor.

38 An application to issue a writ of execution after six years and an application to register a judgment after 12 months share an essential characteristic: both are applications to enable a judgment creditor to take steps towards the enforcement of a judgment out of time.

39 I find the rules established in these three cases relevant and applicable to late applications for registration. In applying these principles to applications for leave to register a judgment under the RECJA, the 12-month period will apply instead of the six-year period. With that adjustment, it may be less onerous to explain a delay beyond 12 months, and the potential prejudice on the judgment debtor may be lower.

40 Having said that, the delay in this case is substantial. Under s 3(1) of the RECJA, the application to register the judgment should have been made by 13 March 1999. When the application was made on 5 October 2004, that was more than five and a half years late. Even if we take the effective date from which the application could be filed to be the date when leave to appeal was refused, *ie*, 20 October 1999, the delay was still just two weeks short of four years.

Reasons for the delay in the registration

41 The judgment creditor's explanation for the delay in registering the judgment in Singapore is that it only came to know from an unnamed source in the former Yugoslavia in late July 2004 that there was a sum of approximately US$14.8m held in a fixed deposit account in Singapore by Deuteron (Asia) Pte Ltd ("Deuteron") on behalf of the judgment debtor.

42 However, its counsel pointed out that the judgment creditor had not sat on its hands, at least as far as England is concerned. Within a week of the lifting of the stay of execution, garnishee proceedings were commenced which ultimately resulted in the recovery of £1,630,919.20 towards the satisfaction of the judgment debt in 2004.

43 The judgment creditor gave two reasons for not taking action earlier in Singapore. The first reason was that it was deceived by the judgment debtor. The judgment debtor, in an affidavit filed in February 1998 in support of its application for a stay of execution by an English solicitor V E Pitroff, deposed that the judgment debtor's own assets in Serbia are extremely limited. The judgment creditor had referred the affidavit to its Yugoslav lawyer, S Protic, who reviewed it and advised that it had given a correct report on the financial state of the judgment debtor. Pitroff filed a further affidavit in February 1999 to state that the judgment debtor was in a parlous financial condition.

44 The judgment creditor's submission was that it was entitled to rely on the judgment debtor's declarations of its poor financial condition, and it was justified in not taking action earlier.

45 The second reason was that events in Yugoslavia and the peculiar status of the judgment debtor in the Yugoslavia state were such that recovery action was not practicable. The judgment creditor described Yugoslavia to be in a state of war, bloodshed, political turmoil and instability between 1997 and 2002, and alleged that the judgment debtor played a central role in the country's military procurement and national defence.

46 Do the two reasons justify the delay in registration? The judgment creditor complained that the judgment debtor had been consistently uncooperative in meeting the judgment, and had not made any payment voluntarily.

47 There is no evidence that the judgment creditor had reposed its trust in the judgment debtor. The recovery action the judgment creditor took in England showed that it did not believe that the judgment debtor had no assets and that recovery action could not be taken, and the English enforcement actions had brought results.

48 Nevertheless, M B Savage Jr, the American legal counsel of the judgment creditor, stated in an affidavit:

> I consider it impractical, to say the least, to expect Westacre to have made continuing inquiries of the Yugoslav authorities or searches of Yugoslav governmental records given the political situation in the country and [the judgment debtor's] role in the country's military procurement and national defence.

49 The judgment creditor described the conditions in Yugoslavia between 1997 and 2002 as volatile and unstable. There was no suggestion that those conditions continued after 2002, or that any recovery action was attempted or thwarted before 2002, or thereafter up to 2004 when the application to register the judgment was made.

50 The judgment creditor also contended that:

> it should be borne in mind that before July 2004, the Judgment Creditors were not aware of the fact that the Judgment Debtors held shares in a Singapore company. It would not have been possible for the Judgment Creditors to have approached the Serbian authorities with a specific enquiry about the Judgment Debtors' shareholdings in Singapore.

51 The judgment debtor rejected the judgment creditor's explanations and asserted that if the judgment creditor made a search at the Registry of Companies Incorporated Abroad, the search would reveal that the judgment debtor held shares in Deuteron.

52 The judgment creditor needs to do more than to aver to its opinion that a search could not be done. As it had not made a search, it has to demonstrate now that it had acted reasonably in not doing that. A proper response would be to state that it obtained advice at that time from people with knowledge and experience of the state of affairs in Yugoslavia, or that even if it had made a search, it would not have yielded information on the Deuteron shareholding, and to back it up with evidence of the rejected search application or applications, or of the results of a search which do not disclose the shareholding in Deuteron, even if it is made only for the purpose of these proceedings.

The effect of registration

53 In England, under O 46 r 2(1)(*a*) of the Rules of the Supreme Court, a writ of execution to enforce a judgment or order may not be issued without the leave of court where six years or more have elapsed since the date of the judgment or order. The position is the same under O 46 r 2(1)(*a*) of our Rules of Court.

54 By the time the judgment creditor filed its application to register the judgment in Singapore, more than six years had elapsed from 13 March 1998, when the judgment was obtained. When the judgment is registered, s 3(3)(*a*) of the RECJA states that it shall have the same force and effect as if it had been obtained upon the date of registration.

55 The effect of s 3(3)(*a*) is that whereas leave is required for the issue of a writ of execution on the judgment in England, no leave is required for that to be issued in Singapore upon registration because the six-year period has not elapsed. This is a prejudice to the judgment debtor if the judgment is registered.

56 It may be argued that the prejudice should be disregarded because some prejudice is inevitable to the judgment debtor whenever a judgment is registered under the RECJA. At the least, the territorial jurisdiction for the enforcement of the judgment is extended to Singapore, and the time period is extended to run from the date of registration instead of the date of judgment. While this is correct, it has to be recognised that these inevitable

forms of prejudice should not be strong factors against registration because no registration will be possible if they are regarded as bars to registration. Having said that, the period of the extension of the period of enforceability, as distinct from an extension *per se*, should still be taken into consideration.

57 In the present case, the easier access to enforcement through writs of execution is not an inherent consequence of registration. When it occurs, the prejudice must be taken into account in deciding whether registration is to be allowed.

58 This issue was touched on in the hearing before the assistant registrar. In the arguments, counsel for the judgment creditor submitted that the rule did not prohibit all forms of enforcement after six years without leave. *Ezekiel v Orakpo* [1997] 1 WLR 340, a decision of the Court of Appeal dealing with the effect of O 46 r 2(1) of the Rules of the Supreme Court, was cited as support.

59 In that decision, Millett LJ referred to O 46 r 1 which defines a "writ of execution" to include:

> … a writ of fieri facias, a writ of possession, a writ of delivery, a writ of sequestration and any further writ in aid of any of the aforementioned writs. …

and arrived at the conclusion, at 343–344 that:

> [i]t is true that the definition is inclusive rather than exhaustive, but what is noticeable is that every single writ described in rule 1 is a writ which is issued by the court on the application of the plaintiff without any hearing by a judicial officer of any kind. The writ is issued by a clerk in the office on being supplied with a copy of the judgment. The situations described in rule 2 are all situations where the writ of execution ought not to issue as of right without some further consideration by the court, because in every situation there mentioned some further investigation is called for. It is plain, therefore, that the object of the rule is that, in certain relevant situations, the court should have an opportunity to investigate before the writ of execution should issue.
>
> Applications for garnishee or charging orders are not within the mischief of the rule, because application has to be made to the court in order to obtain the order sought.

60 Probably with those pronouncements in mind, counsel for the judgment creditor informed the assistant registrar during the hearing that:

> As far as the execution proceedings contemplated in Singapore are concerned, they are garnishee proceedings.

61 That statement may have led the assistant registrar to allow the registration to stand, but with the restriction that the registration was "for execution by way of garnishee proceedings only".

Whether the restriction is proper

62 The assistant registrar explained:

I noted that s 3(3)(*b*) of the Act also states that "the registering court shall have the same control and jurisdiction over the judgment as it has over similar judgment given by itself, but insofar as it relates to execution." To me, this provision certainly gave the court the power to direct that any judgment that was registered should only be enforced by a certain method, the approved method in this case being garnishee proceedings. If the source of such power was not in s 3(3)(*b*), then the court could still have recourse to its inherent jurisdiction under O 92 r 4 (to make any order as may be necessary to prevent injustice) or its general power under O 92 r 5 (to make such further orders incidental or consequential to any judgment or order as may be necessary in any case).

63 Order 92 rr 4 and 5 read:

4. For the avoidance of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

5. Without prejudice to Rule 4, the Court may make or give such further orders or directions incidental or consequential to any judgment or order as may be necessary in any case.

64 The explanation appears at first sight to avert the prejudice to the judgment debtor. If no leave is necessary for garnishee proceedings in England after six years, the restricted registration of the judgment in Singapore does not place the judgment debtor in a worse position.

65 However, the restriction is only an answer if such a restriction can be made under the provisions of the RECJA. The act lays down the circumstances under which judgments may be registered and the circumstances in which they may not be registered. Nothing in the act authorises a judgment to be registered on the condition that it shall not enjoy the full benefit of registration.

66 The assistant registrar had regarded the words "in so far only as relates to execution" in s 3(3)(*b*) of the RECJA to give her the power to direct the registration of the judgment with the restriction that it shall only be enforced by garnishee proceedings.

67 It does not appear to be the purport of those words. Section 3(3) refers to the effect of registration. Section 3(3)(*a*) deals with the registered judgment. It states that the registered judgment shall, from the date of registration, have the same force and effect as a judgment of the registering court. Section 3(3)(*b*) deals with the powers of the registering court. It states that the registering court's powers shall be the same as those it has over its own judgments, but only in so far as they relate to execution. This is entirely in keeping with the purpose and effect of registration. The registering court does not require and does not have other powers, *eg*, the powers to vary or set aside the registered judgment, though it has the power to set aside the registration of the judgment.

68 What is stated in the foregoing paragraph is not new. Warren L H Khoo J discussed the effect of s 3(3)(*b*) of the RECJA in *Re Cheah Theam Swee, ex parte Equiticorp Finance Group Ltd* [1996] 1 SLR(R) 24 at [23]–[24], and concluded that:

The purpose of para (*b*) of sub-s (3), it seems to me, is that once a judgment has passed the hurdles set out in sub-ss (1) and (2), and has been registered, it must be given effect according to its terms. No proceedings to impeach its validity are to be allowed. In other words the judgment debtor is not permitted

> to go behind the judgment any more.
>
> Paragraph (*b*) gives the registering court the same control and jurisdiction over the registered judgment as if it was a judgment of its own. Without the words "but in so far as relates to the execution under this section", it might be open to the judgment debtor to argue that the registering court has the jurisdiction to entertain proceedings to impeach the registered judgment, on ground[s] such as that the original court had made a mistake of fact or of law. The purpose of adding this qualification in para (*b*), it seems to me, is to forestall this possibility, so that once the judgment has passed the hurdle set out in sub-ss (1) and (2), it is to be treated as final and conclusive. If the judgment debtor wishes to challenge it on any ground not set out in those subsections, he has to go before the originating court, and not the registering court. In other words, the intention of para (*b*) of sub-s (3) is to confer a jurisdiction on the registering court to carry out the terms of the registered judgment, once it has been registered, and to entertain all proceedings to that end, but not proceedings seeking to go back on the judgment.

69 Section 3(3)(*b*) of the RECJA does not give the court power to impose the restriction. If a judgment deserves to be registered, it should be registered with full effect. Conversely, if the judgment does not deserve to be registered because registration would result in prejudice to the judgment debtor, it should not be registered in a restricted form.

70 Order 92 r 4 and r 5 cannot be invoked to impose such a restriction. The restriction cannot be justified as being necessary to prevent injustice or to prevent an abuse of the process of the court, and it is not a necessary incidental or consequential order to give effect to a registration which, when approved, is intended to be effective without restriction.

71 Without the restriction, the prejudice to the judgment debtor is clear, and that is that the judgment creditor can issue writs of execution against it in Singapore without the leave of court, though leave of court is necessary in England.

Conclusion

72 As no valid reasons were given by the judgment creditor for the delay in applying for registration, I find that it is not just or convenient that the judgment be registered despite the delay. The prejudice that the registration will bring on the judgment debtor is a further factor that militates against registration.

73 I set aside the registration of the judgment and vary the assistant registrar's order on costs. The judgment debtor shall have the costs here and below on the "just and convenient" issue, and the judgment creditor shall have costs here and below on the limitation issue.

Reported by Mohamed Faizal.

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