

SUPREME COURT OF SEYCHELLES AT VICTORIA

Reportable
[2019] SCSC 30
XP 188/2018

In the ex parte matter of:

EASTERN EUROPEAN ENGINEERING LIMITED
(rep. by Samantha Aglae)

Petitioner

Neutral Citation: *Eastern European Engineering Limited*

(XP188/2018) [2019] SCSC 30 (25 January 2019).

Before: Carolus J

Summary: **Grant of Petition for Registration of Orders of the High Court of England and Wales – Reciprocal Enforcement of British Judgments Act**

Heard: 12 December 2018

Delivered: 25 January 2019

ORDER

PETITION FOR REGISTRATION OF JUDGMENT OF THE HIGH COURT OF ENGLAND & WALES

(Section 2(1) Reciprocal Enforcement of British Judgment Act)

ORDER

E. Carolus, J

The Petition

- [1] The Petitioner filed an ex parte Petition dated 16th November, 2018, pursuant to section 3(1) of the Reciprocal Enforcement of British Judgments Act (“the Act”) for the registration of two Orders of the High Court of England and Wales. The Petition is signed by Mrs. Samantha Aglae as Attorney for the Petitioner and the address for service is stated to be “Samantha Aglae, Suite 40, OJ Building Church Street, Victoria, Mahe.”

- [2] An amended Petition dated 4th December was subsequently filed on the same date. It was signed by Mr. Elvis Chetty as Attorney for the Petitioner and the address for service is stated to be “Elvis Chetty, 2nd Floor, MS Complex, Revolution Avenue, Victoria, Mahe.”
- [3] Mr. Chetty has clarified that Mrs. Aglae remains the Petitioner’s attorney on record and that he is only standing in for her because she had to travel overseas.
- [4] The Amended Petition is supported by an Affidavit sworn by Vadim Zaslouov, a Director of Eastern European Engineering Limited and relevant documents. The averments in the Affidavit in essence repeats those in the Petition. In his Affidavit Vadim Zaslouov depones as follows –
1. That the Petitioner is a Company duly incorporated and registered under the laws of Seychelles.
 2. That there is a need for the amendments to the Petition.
 3. That the Vijay Construction (Proprietary) Ltd is a company duly incorporated and registered under the laws of Seychelles and is involved in the business of civil engineering and construction in Seychelles. Whose registered office is situated at Providence, Mahe, Seychelles.
 4. That in the year 2011 the Petitioner engaged Vijay Construction (Proprietary) Ltd to carry out the construction of a hotel project known as Savoy Resort and Spa Hotel at Beau Vallon(“**the Project**”), and the Petitioner and Vijay Construction (Proprietary) Ltd entered into six agreements for the construction works necessary for the completion of the Project:
 - (a) An agreement dated 15 April 2011 for the construction of block 1 and 2, beach bar and water sport unit (Contract No.1);
 - (b) An agreement dated 4 August 2011 for the main swimming pool, the pool bar and engineering building and spa and gym (Contract No.2);

- (c) An agreement dated 30 August 2011 for earthworks, ground improvement and installation of a geogrid for the main building (Contract No. 3);
 - (d) An agreement dated 30 September 2011 for concrete works at the main building (Contract No.4);
 - (e) An agreement dated 19 October 2011 for the manufacture and installation of steel roof structures on the main building, blocks 1 and 2 and the spa (Contract No. 5); and
 - (f) An agreement dated 23 December 2011 for the other works (Contract No. 6
(collectively, the **Agreements** and each, individually, an Agreement)
5. That the Agreements provided that any dispute arising under or from the Agreements are to be settled by arbitration under the Rules of arbitration of the International Chamber of Commerce (**ICC**), and that the place of the arbitration should be Paris, France.
 6. That the Rules of Arbitration of the ICC, provided among other things, that by submitting a dispute to arbitration under the Rules of the ICC, the parties undertake to carry out any award without delay and shall be deemed to have waived their rights to any form of recourse in so far as such waiver can validly be made.
 7. That in the course of the Agreements, disputes arose between the parties resulting to termination of all the Agreements by the Petitioner.
 8. That the Petitioner pursuant to the Agreements on the 12 September 2012 referred the disputes to arbitration in Paris under the Arbitration Rules of the ICC. That Vijay Construction (Proprietary) Ltd submitted to arbitral tribunal constituted pursuant to the Agreements.
 9. The arbitral tribunal delivered its final award on the disputes on 14 November 2014 (“the Award”).

10. That Vijay Construction (Proprietary) Ltd applied for the Award to be set aside by the French Courts namely, Court D'Appel and the Court de Cassation and the application was dismissed.
11. The Petitioner filed an application before the High Court in England and Wales pursuant to section 101 of the (UK) Arbitration Act 1996 for permission to enforce the Award and judgment in the terms of the Award, which was granted by an Order made on 18 August 2015 by Mr Justice Cooke. Vijay Construction (Proprietary) Ltd has failed to comply with the Order of Mr Justice Cooke.
12. That Vijay Construction (Proprietary) Ltd then filed an application pursuant to section 103 of the (UK) Arbitration Act on 23 October 2015 seeking to the Order of Mr Justice Cooke of 18 August 2015 be set aside, which application was dismissed by an order of Mrs Justice Cockerill made on 11 October 2018. The Order of Mrs Justice Cockerill also ordered Vijay Construction (Proprietary) Ltd to pay the Petitioner's costs of defending Vijay Construction (Proprietary) Ltd to pay the Petitioner's costs of defending Vijay Construction (Proprietary) Ltd set-aside application, such costs to be assessed if not agreed, and to make an interim payment on account of those costs of £245,315.90 by 4pm (London time) on 25 October 2018. That Vijay Construction (Proprietary) Ltd has failed to make the interim costs payment (or any part of it) as ordered.
13. That the High Court of England and Wales had jurisdiction to entertain the applications of the Petitioner and that of Vijay Construction (Proprietary) Ltd.
14. That all the rights of Vijay Construction (Proprietary) Ltd were respected in the proceedings in the High Court of England and Wales.
15. That the Order of Mr Justice Cooke made on 18 August 2015 and the Order of Mrs Justice Cockerill made on 11 October 2018 are not contrary to public policy and were not obtained through fraud.
16. That the Order of Mr Justice Cooke made on 18 August 2015 and the Order of Mrs Justice Cockerill made on 11 October are not subject to an appeal and the relevant

time limits under the English Civil Procedure Rules for mounting any appeal have expired.

17. That the Order of Mr Justice Cooke made on 18 August 2015 and the interim costs payment ordered by the Order of Mrs Justice Cockerill made on 11 October 2018 are capable of being enforced in England and Wales.

18. The Petitioner is desirous of rendering the Order of Mr Justice Cooke made on August 2015 and the Order of Mrs Justice Cockerill made on 11 October 2018 executory in Seychelles.

[5] In terms of the Petition, the Petitioner prays for the following Orders –

- (i) to register and render executory the Order of Mr. Justice Cookemade on 18 August 2015 and the Order of Mrs Justice Cockerill made on 11 October 2018 in Seychelles under section 3(1) Reciprocal Enforcement of British Judgments Act;
- (ii) the British judgment shall be registered without any impediment;
- (iii) that upon registration the said judgment shall be executed forthwith;
- (iv) that execution of the British Judgment cannot be stayed before the date when the Respondent’s Application for Stay of execution has been heard and granted by the Court;
- (v) any other orders the Court deems fit in the circumstances of the case; and
- (vi) costs of the case.

[6] In support of the Petition, the Petitioner has also filed an Affidavit sworn by Daniel Terence Burbeary, solicitor of Cooke, Young and Keidan LLP, before Daniel Richard Hayward Solicitor/ Commissioner of Oaths. The Deponent depones as follows:

1. I am a solicitor qualified and admitted to practice in England and Wales and a member of the Law Society of England and Wales I am a partner and member of Cooke, Young and Keidan LLP (“CYK”), which is a law firm based in London, in

the United Kingdom. Unless otherwise stated, the facts and matters to which I refer in this affidavit are within my own knowledge. Insofar as they are within my own knowledge, they are true, and insofar as they are not within my own knowledge, they are true to the best of my knowledge and belief.

2. CYK was instructed by Eastern Engineering Limited (“**EEEL**”) in late January 2018 to defend an application brought by Vijay Construction (Proprietary) Limited (“**Vijay**”) in the High Court of England and Wales, pursuant to which Vijay sought to have an Order made by Mr Justice Cooke on 18 August 2015 (the “**CookeOrder**”), in the case of Eastern European Engineering Limited v Vijay Construction (Proprietary) Limited: Claim Number CL-2015-000613, set aside (the “**Set-Aside Application**”). The Cooke Order was made prior to my or my firm’s involvement in the matter. As a consequence of Vijay issuing the Set-Aside Application, as a matter of English law EEEL was unable to take any steps to enforce the Cooke Order pending the final determination of the Set-Aside Application.
3. On 20 June 2018, following a hearing on 7 June 2018 at which EEEL was represented by Leading Counsel (Benjamin Pilling QC) and Junior Counsel (Daniel Khoo) and Vijay was represented by Leading Counsel (David Lewis QC), Mr Justice Butcher made a domestic freezing order over Vijay’s (the “**Butcher Order**”).
4. On 11 October 2018, following a two-day hearing on 8 and 9 October 2018 at which EEEL was represented by Leading Counsel (Benjamin Pilling QC) and Junior Counsel (Daniel Khoo) and Vijay was represented by Leading Counsel (Sanjay Patel QC) and Junior Counsel (MuthupandiGanesan), Mrs Justice Cockerill dismissed the Set-Aside Application and ordered Vijay to pay EEEL’s costs of the proceedings, to be assessed if not agreed (the “**Cockerill Order**”). The Cockerill Order also ordered Vijay to make an interim payment on account of EEEL’s costs, in the amount of £245,315.90, by 4pm (London time on 25 October 2018). Vijay has failed to make the payment (or any part of it) as ordered. As a consequence of

the Set-Aside Application having been dismissed by the Cockerill Order, EEEL is now free, as a matter of English law, to proceed with enforcement of the Cooke Order.

5. I have been asked by EEEL to swear this Affidavit in support of EEEL's Petition to be filed in Seychelles, by which I understand EEEL to be seeking registration in Seychelles of the Cooke Order and the Cockerill Order and for them to be declared executory, in order to confirm that:
 - 5.1 the Cooke Order, the judgment of Mrs Justice Cockerill handed down on 11 October 2019 and the Cockerill Order were made by the High Court of England and Wales in civil proceedings;
 - 5.2 in my professional view, the High Court of England and Wales acted within its jurisdiction in making the Cooke Order and the Cockerill Order (and Vijay did not, as part of the Set-Aside Application, seek to challenge the jurisdiction of the English Courts to make those orders);
 - 5.3 in my professional view, the territorial effect of the Cooke Order and the Cockerill Order is not limited as a matter of English law; instead as a matter of English law, the effect (if any) of the Cooke Order and/or the Cockerill Order in any other jurisdiction(s) outside England and Wales is a matter for the laws of the other jurisdiction(s) in question;
 - 5.4 Vijay entered an appearance before the High Court of England and Wales and actively participated in the Set-Aside Application, with the assistance of two different firms of solicitors and several different Leading and Junior Counsel. As part of the Set-Aside Application proceedings, Vijay sought permission to cross-examine certain of EEEL's witnesses but that application was refused by Mrs Justice Cockerill (which is recorded in the Cockerill Order);
 - 5.5 so far as I am aware, neither the Cooke Order, nor the Cockerill Order, was obtained by fraud;

- 5.6 the Cooke Order and the Cockerill Order are final and binding as to the matters that they determine;
- 5.7 in my professional view, and for the reasons that I have stated in paragraph 5.3 above, enforcement of the Cooke Order and/or the Cockerill Order within or outside England and Wales would not be contrary to English public policy;
- 5.8 the Cooke Order and the part of the Cockerill Order ordering Vijay to make an interim payment on account of EEEL's costs are monetary judgment; and
- 5.9 Vijay has failed to pay any (or any part) of the sums that it is required to pay pursuant to the Cooke Order and/or the Cockerill Oder.

[7] Mr. Chetty made a brief submission with reference to the documents exhibited in Mr. Zaslouov's Affidavit essentially to show that all the requirements of the Act for registration of the judgment had been fulfilled.

The Law

[8] The relevant provisions of the Reciprocal Enforcement of British Judgments Act, pursuant to which the Petition is made, are set out below:

- 3.(1) Where a judgment has been obtained in the High Court of England or of Northern Ireland or in the Court of Session of Scotland, the judgment creditor may apply to the court at any time within twelve months after the date of the judgment or such longer period as may be allowed by court, and on any such application the court may, if in all the circumstances of the case it considers it just and convenient that the judgment should be enforced in Seychelles, and subject to the provisions of this section, order the judgment to be registered accordingly.
- 3. (2) No judgment shall be ordered to be registered under this section if –
 - (a) the original court acted without jurisdiction; or

- (b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of the original court; or
- (c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court; or
- (d) the judgment was obtained by fraud; or
- (e) the judgment debtor satisfies the 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 court.

[9] The procedure to be followed in making a Petition under section 3(1) of the Act is prescribed by the Practice and Procedure Rules GN27/1923 (“the Rules”) made under the Act. The relevant provisions are reproduced below:

1. Any application under Section 3 (1) of the Act, for leave to have a judgment obtained in the High Court of England or of Ireland, or in the Court of Session in Scotland or in a Superior Court in any part of Her Majesty's Dominions outside the United Kingdom to which the said Act applies, registered in the Supreme Court shall be made ex parte by way of a petition to a Judge in chambers.
2. The Petition shall be supported by an affidavit of the facts exhibiting the judgment or a verified or certified or otherwise duly authenticated copy thereof and stating to the best of the information and belief of the deponent the amount remaining due under the Judgment and that the Judgment creditor is entitled to enforce the judgment and that the judgment does not fall within any of the cases in which under

section 3 (2) of the Act a judgment cannot properly be ordered to be registered. The affidavit must also, so far as the deponent can, give the full name, title, trade or business and usual or last known place of abode or business and usual or creditor and judgment debtor respectively.

3. On receipt of the petition and affidavit the Registrar of the Supreme Court shall submit the same to a Judge who upon being satisfied that the petition is bona fide shall authorize the filing of a plaint in the Supreme Court in terms of the petition and of the judgment sought to be registered; and the judge shall order the Registrar to enter the said plaint when filed in the register of civil and commercial suits and to issue a summons to the judgment debtor calling upon him to appear in the Supreme Court at a date and time therein stated to answer to the said plaint. Thereafter the procedure and practice to be followed by the parties shall be such as is provided by the Seychelles Code of Civil Procedure.

Analysis

[10] A reading of the above provisions will show that there are two steps to the procedure for registration of a British judgment under the Act.

[11] In terms of Rule 2 of the Rules the Petitioner must firstly apply for leave to register the judgment sought to be registered by way of an ex parte Petition. Rule 2 further of the Rules further provides that the Petition must be supported by an Affidavit of facts. This Affidavit must exhibit the judgment or a verified or certified or otherwise duly authenticated copy thereof. The affidavit must, so far as the deponent can, give the full name, title, trade or business and usual or last known place of abode or business and usual or creditor and judgment debtor respectively. It must also state to the best of the information and belief of the deponent -

- (i) the amount remaining due under the Judgment; and
- (ii) that the Judgment creditor is entitled to enforce the judgment; and

- (iii) that the judgment does not fall within any of the cases in which under section 3 (2) of the Act a judgment cannot properly be ordered to be registered;
- (iv) so far as the deponent can, give the full name, title, trade or business and usual or last known place of abode or business and usual or creditor and judgment debtor respectively.

[12] If the Judge is satisfied that the Petition is bona fide, he authorises the filing of a plaint in the Supreme Court in terms of the petition and of the judgment sought to be registered. At that stage the Judge also orders the Registrar, when the Plain is filed, to enter the Plaint in the register of civil and commercial suits and to issue a summons to the judgment debtor for him to answer to the said plaint.

[13] The filing of the Plaint is the second step in the proceedings to register the British judgment. It is only after hearing the matter at this second stage that the Court can make an Order for registration of the judgment. In that respect Rule 4 provides as follows:

- 4. If after the hearing the court is satisfied that the case comes within one of the cases in which under section 3(2) of the said Act no judgment can be ordered to be registered or that is not just or convenient that the judgment should be enforced in Seychelles or for other sufficient reasons the court shall make an order accordingly in favour of the judgment debtor. Otherwise the court shall make an order in favour of the judgment creditor in terms of the original judgment or subject to such modifications as the court shall consider just and expedient having regard to the facts disclosed from the pleadings and at the hearing of the matter.

[14] The effect of an order of the Court for registration of a judgment at this second stage is provide for at section 3(3) of the Act and Rule 5 of the Rules which are reproduced below.

Section 3(3) of the Act

3. (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 has been a judgment originally obtained or entered up on the date of registration in the court;
- (b) the 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 of the application from registration) shall be recoverable in like manner as if they were sums payable under the judgment.

Rule 5 of the Rules

- 5. The final order of the court shall have the same force and effect as a judgment of the Supreme Court and shall be entered by the Registrar in the register of civil and commercial suits, against the original entry of the plaint.

Decision

[15] I am satisfied on the evidence on record that the requirements set out in the Act and the Rules in respect of the Petition for registration of the judgment of the High Court of England and Wales have been fulfilled and that the Petition is bona fide.

[16] Accordingly in terms of Rule 3 of the Rules I authorise the filing of a Plaint in the Supreme Court in terms of the Petition and in terms of the Judgment sought to be registered. I further make the following Order:

The Registrar is directed to enter the said plaint, when filed, in the register of civil and commercial suits and to issue a summons to the judgment debtor calling upon him to appear in the Supreme Court at a date and time therein stated to answer to the said plaint.

Signed, dated and delivered at Ile du Port on 25th January, 2019

Carolus

E. Carolus, J