



[2023] JMSC Civ 48

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. SU2023CV00592

BETWEEN JACKQUELINE MACK-FOSTER APPLICANT
A N D CARLTON EVEROL FOSTER RESPONDENT

IN CHAMBERS – VIA VIDEO CONFERENCE

Mr. David Stone instructed by Arnaldo Brown & Co for the Applicant

HEARD: March 15, 2023

CIVIL PRACTICE AND PROCEDURE – APPLICATION TO REGISTER FOREIGN ORDER – WHETHER ORDER FROM FLORIDA COURT CAPABLE OF REGISTRATION UNDER THE JUDGMENTS (FOREIGN) (RECIPROCAL ENFORCEMENT) ACT

CIVIL PRACTICE AND PROCEDURE – APPLICATION TO ENFORCE DISCLOSURE ORDER OF A FOREIGN COURT - WHETHER OR NOT INTERIM DISCLOSURE ORDER FROM A FLORIDA COURT CAPABLE OF ENFORCEMENT IN JAMAICA AT COMMON LAW

CIVIL PRACTICE AND PROCEDURE – APPLICATION TO REGISTER FOREIGN ORDER – PROPER PROCEDURE TO UTILISE TO INITIATE APPLICATION – WHETHER FIXED DATE CLAIM FORM TO BE USED OR APPLICATION FOR COURT ORDERS IN FORM 7.

COR: STAPLE J (Ag)

BACKGROUND

[1] Mrs. Mack-Foster has brought proceedings against the Respondent in the Circuit Court of the 17th Judicial Court in and for Broward County in the State of Florida in the United States of America.

- [2] During those proceedings she obtained what she describes in her Affidavit filed on the 28th February 2023 an “Ex Parte Order to Compel” against the Respondent. The effect of the Order is for the Respondent to disclose certain information relating to bank accounts and other holdings in Jamaica as part of the disclosure proceedings in the substantive claim in the Florida Court.
- [3] She now seeks to have permission to have the order registered in Jamaica with a view to having same enforced against the Respondent through the Courts in Jamaica.
- [4] The question for me to determine today is whether or not she is to be permitted to have the Order registered.

PRELIMINARY ISSUE – DID SHE USE THE CORRECT PROCEDURE.

- [5] A preliminary issue that arose for me was whether or not the Applicant has adopted the correct procedure to move the Court to grant permission for the Applicant to register the foreign order. She has commenced these proceedings by filing a Notice of Application for Court Orders in Form 7.
- [6] To my mind, this is the incorrect procedure and these proceedings really ought to commence by way of Fixed Date Claim Form.
- [7] Rule 72.2 of the Civil Procedure Rules sets out the procedure to have a foreign judgment/order registered. In so far as is relevant, Rule 72.2 simply says that, “An application to have a judgment registered in the Court may be made without notice but must be supported by an affidavit...”
- [8] It does not say the form of the Application. However, to my mind, the nature of this application is to determine whether or not one has the right to register the foreign judgment/order in the Jamaican court. As such, it is determining a substantive issue and is not an interlocutory step preceding the filing of a substantive claim seeking the determination of substantive issues of rights and liabilities.

- [9] Rule 8.1(4) sets out the circumstances in which a Fixed Date Claim Form is to be used. These proceedings are one such instance as these proceedings are to determine issues that are not likely to contain substantial disputes as to fact¹ and they are to determine substantive issues of rights and liabilities.
- [10] In the circumstances therefore, I find that the Applicant has not commenced these proceedings properly.

CAN PERMISSION BE GRANTED TO REGISTER THIS ORDER WHETHER UNDER STATUTE OR COMMON LAW?

- [11] Despite my findings above, I will move to consider the substantive matter before me as, if I find favour with the substance of the claim, the procedural aspect could be remedied by me. If the substance of the claim, however, falls away, then there would be really no need for remedial orders.
- [12] It is my finding that the Order exhibited to the Affidavit of the Applicant is incapable of registration in the Jamaican Courts whether under statute or common law.
- [13] Mr. Stone submitted that he is relying on the **Judgment (Foreign) (Reciprocal Enforcement) Act 1936.** He said that that Act applies on the basis of s. 3 of the statute. I asked him for proof of same and he supplied none.
- [14] Turning to the statutory framework first, the registration of foreign judgments in the Jamaican courts for enforcement by our courts is governed by two statutes: the first is the **Judgments and Awards (Reciprocal Enforcement) Act 1923** and the second is the **Judgments (Foreign) (Reciprocal Enforcement) Act 1936.**

¹ See CPR Rule 8.1(4)(d)

- [15] Unfortunately for the Applicant neither statutory regime applies to an order or judgment from a Court in Florida. The 1923 statute only applies to judgments from the United Kingdom or the Commonwealth territories. Florida is neither.
- [16] In relation to the 1936 statute, whilst this statute was of wider application to all foreign judgments, the Court was given no evidence that the Governor General in Council made an order extending the provisions of that statute to the state of Florida in the United States. Indeed, the only Order made by the Governor General in Council to date seems to be the one made in 1936 that applied the 1936 statute to the United Kingdom and certain of their courts.
- [17] Accordingly, the statutory regime does not apply to her and she would have had to have recourse to the common law.

Implications of finding that the Statutory Regimes Do Not Apply to the Applicant for this Application

- [18] Before moving to consider the common law position, I must point out that my finding that neither statutory regime applies to the Applicant's Order in this case has implications for this application.
- [19] Rule 72.1 sets out the scope of Part 72. I will set out the provisions below:

72.1 (a) This Part deals with the procedure under which under the provisions of any enactment a judgment of a foreign court or tribunal may be registered in the court for enforcement within Jamaica.

(b) In this Part "the Acts" means the Judgments and Awards (Reciprocal Enforcement) Act and the Judgments (Foreign) (Reciprocal Enforcement) Act.

(c) This Part takes effect subject to the requirements of the Acts.

- [20] So it is clear that this section deals with the provisions under **any enactment**. It does not speak to the common law provisions at all. So this application would not

be governed by Part 72 as neither enactment, as defined by Rule 72.1(b), would apply to the Order being sought to be registered by this Applicant².

How About the Common Law

[21] The Applicant is not assisted by the Common Law either. If the Order could not be registered under either enactment, the Applicant could seek to have it enforced through the Common Law³.

[22] In ***Sylvester Dennis v Lana Dennis*** the recognised conditions under which this court will assent to the enforcement of a foreign judgment in Jamaica, at common Law, were enumerated as follows:

- (a) Where the judgment was handed down by a Court of competent jurisdiction;**
- (b) If it is final and conclusive;**
- (c) It must be enforceable by or under Jamaican Law;**
- (d) It must be for a money debt;**
- (e) It must not be in respect of immovable property; and**
- (f) It must be for a definite sum of money and should not contain a penalty.**

[23] It is clear from the conditions set out above that they are conjunctive – meaning that all of the conditions must be fulfilled before the foreign judgment can be enforced in Jamaica.

[24] In this case, the Order from the Florida Circuit Court sought to be enforced by the Applicant fails requirements (b), (d) and (f). It is not a final and conclusive order determinative of the issues of rights and liabilities between the parties⁴, it was not a money debt judgment and was therefore not for a definitive sum of money.

² See also the decision of Edwards J (As she then was) in the case of *Weststar International Ltd v Ryland Campbell et al* [2018] JMCC Comm 44 at para 49

³ See the case of *Sylvester Dennis v Lana Dennis* [2016] JMCA Civ 56.

⁴ id

[25] As such, it would not be enforceable in Jamaica under the common law.

CONCLUSION

[26] The Court's position is that the Applicant has approached the Court using the wrong procedure. But, that aside, the relief she is seeking cannot be granted by this Court as the order she seeks to register to have enforced is not one that is governed by either of the statutes dealing with the enforcement of foreign judgments. Neither is it governed by the common law.

[27] In the circumstances therefore the Application is refused.

DISPOSITION

- 1 The Applicant's Without Notice Application for Court Order filed on the 28th February 2023 is refused.
- 2 No order as to costs.

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D. Staple, J (Ag)