



IN THE SUPREME COURT OF GIBRALTAR

Neutral Citation Number 2023/GSC/013

2022/ORD/086

**IN THE MATTER OF THE CIVIL JURISDICTION AND JUDGMENTS
ACT 1993**

**IN THE MATTER OF A JUDGMENT OF THE BUSINESS AND
PROPERTY COURTS OF THE HIGH COURT OF JUSTICE OF
ENGLAND AND WALES OBTAINED ON THE 15 NOVEMBER 2021 IN
PROCEEDINGS NUMBERED LM-2021-000049 BETWEEN TERRY
EDGAR AND (1) AITCHISON ASSOCIATES LIMITED AND (2) ALAN
NEIL RUTHERFORD**

BETWEEN:

TERRY EDGAR

Claimant

-and-

(1) AITCHISON ASSOCIATES LIMITED

(2) ALAN NEIL RUTHERFORD

Defendants

Darren Martinez (instructed by Hassans) for the Claimant

Judgment date: 7 March 2023

JUDGMENT

YEATS, J:

1. By Part 8 Claim Form filed on the 30 September 2022, the claimant seeks a declaration that he is able to enforce a judgment of the English High Court

by relying on a certificate issued under section 12 of the Civil Jurisdiction and Judgments Act 1982 of England and Wales (“the English CJJ Act”). The judgment which he ultimately wishes to have enforced is a judgment of the Business and Property Courts of the High Court of Justice of England and Wales made on the 15 November 2021 in proceedings between the claimant on the one hand and Aitchison Associates Limited (“AAL”) and Alan Neil Rutherford on the other (as claimant and defendants respectively in those proceedings).

2. The application for the declaration has become necessary because, following the United Kingdom’s withdrawal from the European Union, the claimant has found himself unable to produce the certificate required by Council Regulation (EU) No. 1215/2012 (“the Regulation”) for enforcement of a judgment.
3. Only a short note of the factual background to the case is necessary. In 2009 and 2010, AAL borrowed monies from the claimant. By a deed of guarantee made on the 19 March 2009, Mr Rutherford guaranteed the sums due by AAL. As a result of AAL and Mr Rutherford’s failure to repay the amounts borrowed by AAL, the claimant issued proceedings in the English High Court on the 17 March 2021. Judgment in default against AAL in the sum of approximately £16.5M was entered on the 15 November 2021 (“the English judgment”).
4. On the 18 March 2021, the claimant had issued proceedings in Gibraltar seeking the exact same relief against AAL and Mr Rutherford (“the Gibraltar claim”). The claim form and particulars of claim were served on AAL on the 16 July 2021, but no defence has been filed. (Mr Rutherford has not been served.) By operation of CPR 15.11, the proceedings were automatically stayed on the 30 January 2022.
5. Subject to an important caveat, section 23 of the Civil Jurisdiction and Judgments Act 1993 of Gibraltar (“the Gibraltar CJJ Act”) prevents a claimant from bringing proceedings in Gibraltar if the cause of action is the

same as one in which he had obtained judgment in another country. The section provides:

“No proceedings may be brought by a person in Gibraltar on a cause of action in respect of which a judgment has been given in his favour in proceedings between the same parties, or their privies, in a court in Gibraltar or in a court of an overseas country unless that judgment is not enforceable or entitled to recognition in Gibraltar.”

The claimant is therefore unable to pursue the Gibraltar claim unless he is unable to enforce or recognise the English judgment. The question of whether he is able to enforce or recognise the English judgment here depends on whether this court accepts the validity of a certificate issued by the English High Court on the 22 March 2022 pursuant to section 12 of the English CJJ Act.

6. Prior to the United Kingdom’s withdrawal from the European Union, an English judgment could be enforced in Gibraltar pursuant to the Regulation. (The Regulation is a European Union regulation that deals with jurisdiction and with the recognition and enforcement of judgments in civil and commercial matters in member states.) A certificate under article 53 (“article 53 certificate”) could be obtained from the High Court in England and this would then be filed in this court. Subject to some limited exceptions, the judgment would then be automatically recognised and/or become enforceable. Although Gibraltar was not an EU member state in its own right (and therefore the courts of the United Kingdom would not ordinarily be the courts of a different member state for the purposes of the regulation), section 39 of the Gibraltar CJJ Act provides that Gibraltar and the United Kingdom shall be treated as if each were a separate state for the purposes of the Regulation.
7. The Regulation was retained as part of Gibraltar’s domestic law by section 6 of the European Union (Withdrawal) Act 2019. However, it no longer applies in the United Kingdom. Although it was part of the United Kingdom’s retained legislation during the implementation period (the period between the 31 January 2020, when the UK left the EU, and the 31

December 2020, the date by which a future relationship agreement was to be negotiated) it was revoked by section 89 of the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019.

8. A consequence of the inapplicability of the Regulation in the United Kingdom is that the English courts no longer provide article 53 certificates. There is no mechanism by which one can be obtained. The English courts do however issue certificates pursuant to section 12 of the English CJJ Act for the purposes of the recognition or enforcement of an English judgment under the Convention on Choice of Court Agreements concluded on the 30 June 2005 at the Hague. The claimant has obtained such a certificate (“section 12 certificate”).
9. Mr Martinez submitted that the substance of a section 12 certificate is the same as that of an article 53 certificate. That EU legislation should be construed purposively and the court should therefore treat it as one and the same. Mr Martinez pointed to the anomaly that would otherwise exist if a judgment from any EU member state could be easily enforced in Gibraltar, whereas if a section 12 certificate is not accepted, an English judgment would not.
10. Section 39 of the Gibraltar CJJ Act still refers to the United Kingdom as a separate state for the purposes of the Regulation. Mr Martinez submitted that in keeping the provision as it always has been, it must have been the legislature’s intention to retain the Regulation for the purposes of enforcing United Kingdom judgments in Gibraltar and therefore it follows that there has to be flexibility when it comes to the production of the necessary certificate. I agree that this is likely. The other possibility is that the provision is still necessary because the Regulation continues to apply in the United Kingdom to proceedings issued prior to the end of the implementation period (as per article 67 of the withdrawal agreement between the European Union and the United Kingdom and section 7A of the European Union (Withdrawal) Act 2018.)

11. In any case, what exactly is required under the Regulation for the purposes of enforcing a judgment of the courts of another member state? The applicable provisions are contained in Chapter III of the Regulation. In particular, I would highlight articles 37 and 42. In so far as is relevant, these provide as follows:

“Article 37

1. A party who wishes to invoke in a Member State a judgment given in another Member State shall produce:

- (a) a copy of the judgment ...; and*
- (b) the certificate issued pursuant to Article 53*

Article 42

For the purposes of enforcement in a Member State of a judgment given in another Member State, the applicant shall provide the competent enforcement authority with:

- (a) a copy of the judgment ...; and*
- (b) the certificate issued pursuant to Article 53, certifying that the judgment is enforceable and containing an extract of the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest.”*

The production of a certificate issued pursuant to article 53 is therefore mandatory. Article 53 then says:

“Article 53

The court of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex I.”

12. The Annex 1 form requires the following information:

- i. the court of origin with address and contact details;
- ii. the claimant’s details including address, date of birth etc.;
- iii. the defendant’s details including address, date of birth etc.; and
- iv. details of the judgment, including whether it is a judgment in default, whether it is enforceable in the court of origin without further conditions being met; if it was served on the defendant; and the terms of the judgment (including interest and costs).

13. The section 12 certificate obtained by the claimant is a certificate entitled “*Form 110 Certificate for enforcement in a foreign country under section 12 of the Civil Jurisdiction and Judgments Act 1982 (CPR 74.12 and Practice Direction 74A paragraph 7).*” It names the court, the claimant and the defendant, but does not have contact details for any of these. It then certifies the following:

- i. details of the claim form and the sums claimed;
- ii. details of when and how the defendant was served;
- iii. that the defendant did not acknowledge service;
- iv. that no objection to the court’s jurisdiction has been made;
- v. that the claimant obtained default judgment – including details of the judgment sum and costs;
- vi. that the judgment carries interest, the rate of that interest and the date from which it is due;
- vii. that the judgment has been served on the defendant;
- viii. that no application to set aside the judgment has been made;
- ix. that no appeal has been brought within the prescribed period;
- x. that enforcement of the judgment is not stayed or suspended and is still enforceable; and
- xi. that the certificate has been issued pursuant to section 12 of the Civil Jurisdiction and Judgments Act 1982.

14. Comparing the two, it seems to me that the section 12 certificate contains all the information (and arguably more) required in an article 53 certificate - save for the contact details of the court, claimant and defendant. The contact details of the court, claimant and defendant are of course set out in the claim form and they can therefore easily be ascertained and cross-referenced.

15. It is clear that refusing to accept the section 12 certificate would be putting form over substance. All the information required by an article 53 certificate is contained in the section 12 certificate and the claim form. There is no prejudice to anyone if the section 12 certificate is accepted. The Regulation

has been retained as part of the law of Gibraltar and the legislature has mandated that it apply as between the United Kingdom and Gibraltar. The only way that this can happen is if the section 12 certificate is accepted in place of an article 53 certificate. In my judgment, this is necessary and just.

16. I therefore conclude that the claimant can enforce the English judgment here in Gibraltar pursuant to the provisions of the Regulation by relying on the section 12 certificate.

Liam Yeats
Puisne Judge

Date: 7 March 2023