

SUPREME COURT OF QUEENSLAND

CITATION: *Acteon Middle East Fze t/as Team Energy Dubai v Smith*
[2015] QSC 265

PARTIES: **ACTEON MIDDLE EAST FZE T/AS TEAM ENERGY DUBAI**
(applicant)
v
MR GRAHAM DONALD SMITH (JUNIOR)
(respondent)

FILE NO: 2572 of 2015

DIVISION: Trial Division

PROCEEDING: Application on the papers without oral hearing

DELIVERED ON: 7 September 2015

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGE: Peter Lyons J

ORDER:

- 1. The judgment of Norwich County Court of England, dated 1 August 2012, whereby it was ordered that the respondent pay £9,375.53 plus interest at the rate of 8% per annum calculated from the date of registration to the date of payment to the applicant, be registered under Part 2 of the *Foreign Judgments Act 1991* (Cth).**
- 2. The amount payable by the respondent to the applicant is:**
 - (a) £9,375.53; and**
 - (b) interest at the rate of 8% per annum calculated from the date of registration to the date of payment.**
- 3. The reasonable costs of and incidental to registration, fixed at \$3,479.75 AUD, are payable by the respondent to the applicant.**
- 4. The respondent may, within 14 days of being served the notice of registration, apply to have the registration set aside under s 7 of the *Foreign Judgments Act 1991* (Cth).**

CATCHWORDS: PRIVATE INTERNATIONAL LAW – RECOGNITION, EFFECT AND ENFORCEMENT OF FOREIGN JUDGMENTS – UNDER LEGISLATION – ENFORCEMENT OF FOREIGN JUDGMENTS – WHAT JUDGMENTS REGISTRABLE – Where the applicant obtained judgment against the respondent in the Norwich County Court – whether the foreign judgment should be registered in the Supreme Court of Queensland under the

Foreign Judgments Act – whether default judgment in the Norwich County Court is a final and conclusive judgment for the purposes of s 5(4) of the *Foreign Judgments Act* – where the applicant did not provide evidence of the rate of exchange prevailing on the conversion day pursuant to s 6(11)(b) of the *Foreign Judgments Act* – whether the foreign judgment should be registered in Australian currency or in the currency in which it is expressed

SOLICITORS: Holman Webb Lawyers for the plaintiff

- [1] **PETER LYONS J:** On 1 August 2012, the applicant (*Acteon*) obtained judgment against the respondent in the Norwich County Court, England, in a sum of £9,375.53. Acteon has applied to register that judgment in this Court under the *Foreign Judgments Act 1991 (Cth) (FJ Act)*.
- [2] Under s 6(1) a judgment creditor under a judgment to which Part 2 of the FJ Act applies may, within six years of the date of judgment, apply “to the appropriate Court” to have the judgment registered in the Court. It is apparent from s 6(2) of the FJ Act that this Court is the appropriate Court.
- [3] Under s 5(4) of the FJ Act, Part 2 of that Act applies to an enforceable money judgment that is final and conclusive, and was given in an inferior Court of a country to which Part 2 extends. Under s 5(3) of the Act, Part 2 extends to specific inferior Courts of a country, identified in the regulations. Regulation 5(2) of the *Foreign Judgments Regulations 1992 (Cth) (FJ Regulations)* extends Part 2 of the FJ Act to the County Courts of England.
- [4] The certified copy of the judgment of the Norwich County Court reveals it to be a judgment given by default. Such a judgment is final, at least for the purposes of the doctrine of *res judicata*¹. The FJ Act is concerned with mechanisms for the enforcement of a judgment. Plainly enough, it is intended that Australian judgments obtained by default are to be enforceable; and reciprocity considerations which underlie the FJ Act² make it likely that no narrower approach should be taken to the question of finality for the purposes of that Act, than is taken for the purposes of the doctrine of *res judicata*. Accordingly, I am satisfied that the judgment of the Norwich County Court is, for the purposes of s 5(4) of the FJ Act, a final and conclusive judgment.
- [5] There is no reason to doubt that the judgment is enforceable.
- [6] Accordingly, Part 2 of the FJ Act applies to it.
- [7] Under s 6(3) of the FJ Act, the Court is required to order that the judgment be registered, subject to the requirements of that Act, and to proof of matters prescribed by applicable rules of Court. Rule 947E identifies matters to be dealt with in the affidavit in support of an application for registration of a foreign judgment. The affidavit filed with the application generally complies with the provisions of this rule. A matter not addressed was the question of interest on the judgment, referred to in r 947(1)(c)(ix). A further affidavit has dealt with the question of interest. It

¹ See Spencer Bower, Turner and Handley, *The Doctrine of Res Judicata* (3rd ed) Butterworths 1996 at para 163, and cases there cited.

² See for example s 5(1), (3) of the FJ Act.

follows that an order should be made that the judgment be registered. I propose to order accordingly.

[8] Section 6(11) of the FJ Act relevantly provides:

‘... if the amount payable under a judgment that is to be registered is expressed in a currency other than Australian currency, the judgment is to be registered:

- (a) if the judgment creditor has stated in the application that the judgment creditor wishes the judgment to be registered in the currency in which it is expressed – in that currency; or
- (b) in any other case – as if it were for an equivalent amount in Australian currency, based on the rate of exchange prevailing on the second business day (the *conversion day*) before the day on which the application for registration is made.

[9] Section 6(11A) then provides the manner in which the exchange rate prevailing on the conversion day is to be determined.

[10] The application does not express the wish referred to in subparagraph (a) above. The affidavit filed with the application, and the further affidavit, do not, however, provide evidence of the exchange rate prevailing on the conversion day. In those circumstances, I consider it appropriate to express the amount payable under the foreign judgment to be registered in the currency in which it is expressed in the foreign judgment, namely, pounds sterling.

[11] It follows that an order should be made that the judgment be registered with the amount expressed in pounds sterling. I propose to order accordingly.