

New Law made on Enforcing Judgments in Jersey

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The recent judgment of Jersey’s Royal Court in **Brunei Investment Agency and Bandone v Fidelis and others** [2008] JRC 152 has significantly extended its inherent jurisdiction to enforce foreign judgements in Jersey. Proceedings were brought in Jersey by the Brunei Investment Authority (“BIA”) to enforce aspects of an order made by the Bruneian Courts against Prince Jefri Bolkiah (“Prince Jefri”), the youngest brother of the Sultan of Brunei.

The BIA originally commenced proceedings against Prince Jefri in the Courts of Brunei in 2000. It alleged both misappropriation and misapplication of several billion US dollars of state funds by Prince Jefri whilst he occupied governmental office. However the BIA and Prince Jefri reached a settlement prior to the matter being heard before the courts in May 2000. Subsequently Prince Jefri refused to comply with certain terms of the settlement and it was necessary for the BIA to apply to the Bruneian Courts for enforcement of the settlement agreement.

Prince Jefri was ordered by the High Court of Brunei in 2006 to perform his obligations under the settlement agreement (the “Bruneian Judgment”). He appealed the Bruneian Judgment and the appeal was ultimately dismissed by the Privy Council sitting as the appellate Court of Brunei. It was then necessary for the BIA to engage in enforcement litigation across the globe against various assets which he had acquired. As the settlement agreement included obligations to transfer shares in certain Jersey companies to the BIA, litigation in Jersey was necessary and it was this aspect which formed the subject matter of the Jersey proceedings.

PRINCIPLES OF COMITY

Whilst the precise terms of the BIA’s application sought recognition of the Bruneian Judgement pursuant to the principles of comity, the court identified that the real issue before it was in fact,

“whether the court should make the orders requested with or without reconsidering the merits.”

The court acknowledged that the **Judgements (Reciprocal Enforcement) (Jersey) Law 1960** was limited in application to England and Wales, Scotland, Northern Ireland, the Isle of Man and Guernsey. The court was therefore concerned with its inherent jurisdiction to enforce foreign judgements.

The court noted that in the area of private international law, regard would be given to the English common law position. Dicey, Morris and Collins, *The Conflict of Laws* (“Dicey”) is the principle authority on this area. In particular Rule 35 (1) provides that foreign judgements may be enforced if:

- (i) For a debt or definite sum of money; and
- (ii) The judgment is final and conclusive.

The court observed that it was the first time in which the Royal Court was expressly directing its attention to the effect of Rule 35 (1) of Dicey in Jersey, although it did note that the rule had been mentioned though not directly commented upon in previous decisions. The Royal Court therefore embarked upon a thorough review of the Commonwealth authorities in this area, identifying that the origin of Rule 35 (1) could be traced back to an English case from Georgian times known as **Sadler v Robins** (1808) 1 Camp. 253.

With regard to recent Canadian and Caymanian case law in this area the court was mindful of the changes in society since the rule’s inception and the increasing globalisation of business and commerce. As one would expect the world had changed in the last 200 years as therefore had the demands upon the legal systems to respond to the developments in society. The court was conscious that the increasingly globalised nature of business placed acute importance upon certain equitable remedies available to the courts, in particular freezing orders and mandatory injunctions, which would often need to enjoy an international aspect to be wholly effective. In this context the court believed that a re-assessment of Rule 35 (1) of Dicey was necessary.

Adopting reasoning from recent case law in other Commonwealth jurisdictions and in particular Canada, the Cayman Isles and the Isle of Man (with the Privy Council sitting as appellate court thereof) the Royal Court stated:

“In our view the restriction in relation to non-money judgements under English common law (Rule 35 (1) Dicey) should, in its application to this jurisdiction, be amended so as to give the court a discretion... to enforce non-monetary judgements, but...it is a discretion to be exercised cautiously”.

Importantly the court made it clear that this jurisdiction would not be confined to being exercised in the context of Article 51 of the **Trusts (Jersey) Law 1984**.

SIGNIFICANT DEVELOPMENT

The judgement represents a significant and important development extending the court’s inherent jurisdiction to enforce foreign non-monetary judgments in Jersey in appropriate circumstances and it will be interesting to see if the UK and other Commonwealth jurisdictions will adopt this departure from Dicey.

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