[2018] JMCC Comm 44

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO. 2017 CD 00280

BETWEEN	**WESTSTAR INTERNATIONAL LIMITED**	**1ST APPLICANT**
AND	**RYLAND CAMPBELL**	**2nd APPLICANT**
AND	**WINSTON FINZI**	**RESPONDENT**

IN CHAMBERS

Jevaughn St J Leon, instructed by Alton E. Morgan & Co. for the Applicant

Paul Beswick, Miss Terri-Ann Guyah and Miss Gina Chung instructed by Ballantyne Beswick & Co. for the Respondent

HEARD: 11 October and 20 December 2018

CIVIL PRACTICE AND PROCEDURE – APPLICATION TO REGISTER FOREIGN JUDGMENT – JUDGMENT REGISTERED BY THE LOCAL COURT NOT THE CORRECT JUDGMENT OF THE FOREIGN COURT – OMISSION IN JUDGMENT CORRECTED BY THE FOREIGN COURT PRIOR TO APPLICATION TO REGISTER IN THE LOCAL COURT – AUTHENTICATED COPY OF JUDGMENT PRESENTED TO LOCAL COURT FOR REGISTRATION WITHOUT A COPY OF THE ORDER OF AMENDMENT – DEFENDANT NOT APPLYING TO SET ASIDE THE REGISTRATION OF THE FOREIGN JUDGMENT IN THE TIME COMPETENT FOR HIM TO DO SO – NO EXTENSION OF THE TIME TO APPLY TO SET ASIDE WAS APPLIED FOR OR GRANTED WITHIN THE TIME COMPETENT TO DO SO – APPLICATION TO SET ASIDE COMING ONE YEAR AFTER REGISTRATION – APPLICATION MADE OUT OF TIME – WHETHER THE COURT HAS ANY JURISDICTION TO SET ASIDE THE FOREIGN JUDGMENT IN THOSE CIRCUMSTANCES

ENFORCEMENT OF JUDGMENT – INCORRECT FOREIGN JUDGMENT REGISTERED – WHETHER INCORRECT FOREIGN JUDGMENT NOT SET ASIDE IN TIME COMPETENT TO DO SO SHOULD BE ENFORCED IN LOCAL COURTS – NOTICE OF REGISTRATION WITH RIGHT TO SET ASIDE MUST BE SERVED – NO SUCH NOTICE SERVED ALTHOUGH ORDER OF REGISTRATION SERVED – EFFECT OF NON – SERVICE OF NOTICE – FOREIGN JUDGMENTS AND AWARDS (RECIPROCAL) ENFORCEMENT

ACT 1923 SECTIONS 2,3, 5 AND 6; CIVIL PROCEDURE RULES 2002, PART 72, RULES 72.4, 72.6, 72.7 AND 72.8

EDWARDS, J

Background

[1] I heard this application to set aside the registration of a foreign judgment pursuant to Rule 72.7 (3) of the Civil Procedure Rules 2002 (as amended in 2006) (the CPR) and at the end of the hearing, I reserved my judgment. The application is based on factual circumstances for which I have found no comparable precedent and raises important issues of law relating to the powers of this court.

[2] The respondent had filed an ex-parte application for an order for leave to register a foreign judgment obtained from the Supreme Court of St Lucia. Rule 72.4 (1) of the CPR provides for an order giving leave to register a judgment to be drawn up by or on behalf of the judgment creditor. By order dated 13 June 2017, leave to register the judgment was granted to the judgment creditor, who is the respondent in this application. Rule 72.4 (3) of the CPR provides that the order for leave must state the period within which an application may be made to set aside the registration and must contain a notification that execution on the judgment will not issue until after the expiration of that period. By order 2 of the orders for leave to register, the court set a period of 42 days for the judgment creditor to apply to set aside the registration and for that time to run from the date of the service of the order of registration on the judgment debtor. Although rule 72.4 (2) states that the order need not be served on the judgment debtor (where the application is ex-parte) the court ordered that the order for leave to register the foreign judgment be served on the judgment debtor personally.

[3] The foreign judgment was, thereafter, registered by order of Sykes J (as he then was) on 24 October 2017. The applicant did not apply to set aside the registration during the period set by the court. Rule 72.6 provides for a notice of registration of a judgment to be served on the judgment debtor personally which ought to

contain such information as prescribed in rule 72.6 (3). The order of Sykes J registering the judgment was served on the judgment debtor without any such notice attached to or accompanying it.

[4] The respondent now seeks to enforce the registered judgment in these courts, albeit by now well knowing it is the incorrect judgment. The applicants are resisting the enforcement of the registered judgment, on the basis that the judgment registered is the incorrect judgment, and any enforcement of that judgment would be improper and prejudicial to their interest. They have now applied to set aside the registration of the incorrect foreign judgment, a full year after it was registered.

[5] The relevant portion of the notice of application for court orders to set aside registration of judgment filed September 27, 2018 is in the following terms:

> *"(1) That the registration of the Judgment of the St. Lucian Supreme Court in Claim No. SLUHCV2011/0958 on the 4th day of October 2012 and entered herein by the Honourable Mr. Justice Sykes on the 24th day of October 2017 in the Register of Judgments be set aside on the term that it be amended to accurately reflect the actual final Judgment of the St. Lucian Supreme Court in the said claim entered by that Court on the 22nd of November, 2013 or such other terms that the Court deems just."*

[6] The orders in the authenticated copy of the judgment presented to this court for registration from the St Lucian High Court made on 4 October 2012 reads as follows:

1) "A Declaration that the claimant is the owner and/or holder of 45% of the shareholding of the 1st defendant.

2) That the defendants do cause the claimant's 45% shareholding in the 1st defendant to be duly registered.

3) That the defendants do pay to the claimant 45% of any monies obtained upon the sale of any or all of the assets of the 1st defendant.

4) The claimant is awarded costs in the sum of $4,000.00."

[7] Recognising that there was an omission from the judgment, the St Lucian Court on the application of counsel, subsequently made a correction to the judgment on 7 November 2013 and entered on 22 November 2013, by applying the slip rule. That correction was in the following terms:

1) "The order dated 4th October, 2012 be corrected, pursuant to CPR 2000 Part 42:10 (1), by adding the words "In the alternative" to paragraph 3 so that it reads:- "In the alternative, that the defendants do pay to the claimant 45% of any monies obtained upon the sale of any or all of the assets of the 1st defendant.

2) No order as to costs."

[8] Reading from the face of the order correcting the judgment from the St Lucian Court, it is recorded there that counsel for the respective parties were present at the hearing in chambers, when the correction was made. The order correcting the judgment was drawn up by counsel for the respondent (who was the claimant in the St Lucian proceedings). This, then, was the judgment of the High Court of St Lucia when the respondent applied to register the foreign judgment in these courts in 2017, but did so without exhibiting the order of correction made by the St Lucian High Court, which had been filed by his own attorneys.

[9] The application for an order for leave to register the foreign judgment was made to me. I eventually made the order for leave to register a foreign judgment. Even though the correction to the foreign judgment was made in 2013, somehow, an authenticated copy of the original judgment was submitted to me for consideration without the order correcting it and the order for leave and the order of registration both reflect what is contained in the pre-corrected judgment.

[10] To compound matters, the order for leave that I made was made on the basis of an amendment which I granted to the wording of the application, to state 'order for

leave". The minute of order I signed reflects the order for leave I made based on the amendment and an order to that effect was perfected by the Registrar and is on file. However, somehow a later order, which does not reflect the amendment to the application, was, thereafter, drawn up by the attorneys for the respondent and submitted to the registry for signature and was inadvertently signed by me. This later order does not state 'order for leave' but that is the order which the respondent served on the applicant. The upshot of all this is that there are two different orders on the file. This is, coincidentally, in keeping with the theme of this case which also has two orders from the same foreign court. Happily, in the case of my order, it does not affect the substantive issue, as the respondent accepts that the order made by me was for leave to register pursuant to rule 72.4.

[11] The application for an order for leave to register which came before me was made *ex-parte*. Counsel at the time was unsure whether based on the nature of the judgment it qualified as a money judgment or it was a non-monetary judgment or a mixture of both. Counsel, therefore, made submissions with regard to both positions. The order for leave was granted pursuant to the 1923 Act, which is the governing legislation, as well as under Part 72 of the CPR.

The issues

[12] The applicant did not apply to set aside the registration of the foreign judgment in the time set by this court for it to do so. That time has long since expired. The respondent, in this application, did not serve a notice on the judgment debtor as required by Rule 72.6.The issues for me to determine now, involves the following questions:

i) whether the court has any inherent jurisdiction to set aside the registration of a foreign judgment after the time allotted to do so has expired;

ii) whether the court has any inherent jurisdiction to amend the order of registration to reflect the correct judgment of the foreign court;

iii) what is the effect, if any, of the respondent's failure to serve the required statutory notice on the judgment debtor; and

iv) whether, in any event, the court has any inherent jurisdiction to stay execution of the registered foreign judgment.

The applicant's submissions

[13] Counsel for the applicant, Mr Leon pointed out that it was not the contention of the applicant that the judgment of the High Court of St Lucia should not be registered but that the correct full and final judgment is the one that ought to have been registered. Counsel argued that the respondent had notice that the judgment which was registered was not the full and final judgment of the St Lucian Supreme Court.

[14] Counsel also argued that the registration was out of time as the 1923 Act provides that the registration must be made within 1 year of the judgment. Registration, he pointed out took place almost 5 years after the judgment and the respondent has given no explanation why the correct judgment was not registered.

[15] Counsel argued further, that in any event, the intention of the court when it made the order to register the foreign judgment was to register the correct full and final judgment, in accordance with the Act and the Rules. Counsel argued that the court has an inherent jurisdiction to correct an order made which it did not intend to make. Counsel cited the judgment of the Court of Appeal in **Digi Order Jamaica Limited** v **Dennis Atkinson** [2017] JMCA App 1.

[16] Counsel argued further that if the respondent was relying on the 1936 Act, then the 1936 Act required the foreign judgment to be final and conclusive. Counsel also argued that even if that 1936 Act was not applicable, the common law rules also required the judgment to be final and conclusive, before it qualifies to be enforced in these courts. Counsel cited **Sylvester Dennis v Lana Dennis** [2016] JMCA Civ 56, judgment of Phillips JA, wherein the learned judge of appeal said:

> *"It is my view that the order is final and conclusive since it purports to finally determine the rights and liabilities of the parties and the order itself says that it is final."*

[17] Counsel asked the court to find that a judgment is not final and conclusive until it purports to finally determine the rights and liabilities of the parties. Counsel noted that the amendment to the judgment made by the St Lucian Supreme Court on 22 November 2013, substantially changed the interpretation of the rights and liabilities of the parties, from the judgment which was registered in this court. Counsel submitted therefore, that where a correction was made to the judgment in the foreign court, the earlier pre-corrected judgment was not the final and conclusive one. The judgment, he says, cannot be final and conclusive until and unless it reflects the correction.

[18] Counsel also pointed out that the incorrect judgment was registered four years after the correction had already been made by the court and the respondent had a duty to produce the corrected version of the judgment to this court. Counsel noted that the respondent in relying on the incorrected version of the foreign judgment, was seeking to obtain above and beyond that which he had obtained in the St Lucian court. Counsel argued that this court should not facilitate that attempt.

[19] Counsel pointed out that the order was served on the litigant in person and not on his attorneys who were not notified of the order until the period had elapsed. Counsel, he said, only became aware of the order registering the judgment when they were served with enforcement proceedings. Counsel also pointed out that the fact that there was a correction to the foreign judgment only recently came to the notice of the applicant. Counsel pointed the court to the certified copy of the foreign judgment which was corrected in the St Lucian Supreme Court on the basis of the slip rule.

[20] Counsel for the applicant submitted that in compliance with the corrected order the St. Lucian firm did transfer 45% of the shareholding of Weststar International Limited to the respondent. Counsel exhibited a letter dated 20 December 2012

from Corporate Services St. Lucia (1996) Limited to the respondent's attorneys in St. Lucia along with a copy of the share register.

[21] Counsel argued that the court has the inherent jurisdiction to correct the error. Counsel contends that the court ought to register the full and final judgment which was corrected by the latter order entered in the St. Lucia Court on November 22, 2013.

The respondent's submissions

[22] Counsel for the respondent, Miss Guyah submitted that the rules under Part 72 of the CPR are clear on how a foreign judgment may be enforced and the discretion which the court had to set the registration aside. Counsel argued that the rules under Part 72 were followed by the respondent in his application to have the foreign judgment registered.

[23] Counsel pointed out that the orders of the court reflected in the affidavit of Winston Finzi filed 9 May 2017, in support of the notice of application for court orders to register a foreign judgment, also filed 9 May 2017, were duly stamped and authenticated as true copies of the Order (s) by the Registrar of the St. Lucian High Court.

[24] Counsel asked the court to note that the Registrar of the St. Lucian High Court certified the order of 4 October 2012 as a true copy on 25 November 2016, 3 years after the order had been corrected. Counsel argued therefore, that the respondent and his counsel had good reason to rely on the order, as perfected on October 4, 2012 and at all material times exercised due care, diligence and caution in obtaining certified documents from the Saint Lucian Supreme Court, prior to filing the notice of application for court orders to register a foreign judgment.

[25] Counsel pointed to the order dated 13 July 2017 made by me, specifically order 2 which set the period for the application to be made to set aside the registration of the judgment to run from the date of service of the registration on the judgment

debtor. Counsel noted that the time did not begin to run till the date of service. Counsel pointed to the fact that the order was personally served on the applicant on 25 July 2017. Counsel pointed out that the affidavit of service to this effect was filed on August 3, 2017.

[26] Counsel argued that pursuant to that order, as well as to Part 72 of the CPR and Section 5 of the 1936 Act (on which the respondent relied), the applicants had forty-two days to respond to the application to enter the foreign judgment and/or have it set aside and/or correct the order and/or have execution suspended. Counsel stated that it is now too late for the applicant to seek to do so. Counsel noted that over one year has passed since the grant and seal of the Formal Order dated 13 July 2017 and the 25 July 2017 service on the applicants.

[27] Counsel also argued that the application to set aside the foreign judgment, filed September 27, 2018 is appellate in nature and is far outside the general period for appeals, which she argued is seven (7) to fourteen (14) days and well outside the forty-two days granted by the order. Counsel asked the court to note that no good reason had been given regarding the delay in making this application. Counsel submitted that the applicant could not rely on the excuse that the order was served on it personally and not on the attorneys. Counsel noted that the formal order, dated 13 July 2017, was properly served on the applicants personally, as required by the rules and law. Counsel argued that the onus would be on the applicants to inform and accordingly instruct their attorney-at-law and they not being properly instructed, cannot be the fault of the respondent. Counsel noted that even with that explanation, it still did not (adequately if any at all) explain the year-long delay in bringing the application.

[28] Counsel asked the court to note that the forty-two (42) days granted by the 'Nisi' order dated 13 July 2007, expired on the 5 September 2017. Counsel pointed out too, that the application to finalize the registration was filed on the 11 September 2017, a full six (6) days later, which said order was not finalized until the 24 October

2017, forty-four (44) days from the date of that application and ninety-two (92) days from the date of personal service on the applicant.

[29] Counsel argued further, that the 'absolute' formal order dated 24 October 2017 of Sykes J (as he then was) was personally served on the applicants on the 14 November, 2017 and the affidavit of service to this effect was filed on 23 August 2018.

[30] Counsel contended that it is 'trite law' that after the hearing of the notice of application and subsequent grant and seal of the Formal Order dated 24 October 2017, the Court became *functus officio* in the matter. Counsel submitted therefore, that there is no further authority or coordinate jurisdiction of the Court to re-open the registration of the foreign Judgment, vary the order dated October 24, 2017, or in particular, hear this application to set aside the foreign judgment.

[31] Counsel also pointed out that litigants are constantly reminded that there ought to be finality in litigation. Counsel further pointed out that in this case, however, even after the service of the absolute formal order, there existed the right of appeal for at least 14 days, which was not utilized.

[32] Counsel noted that the rules being relied upon by the applicant to set aside the judgment, as entered, are qualified by rules 72.8 (1), 72.4 (4). Counsel argued that the order having stated the period during which the applicant may apply to set aside the registration and that period having expired, the applicant is without a remedy.

[33] Counsel argued that those rules make it clear that this application can only be made within the timeframe determined by the court; (1) in the provisional order (42) days from date of service in this case) or; (2) through an application to extend time to set aside the judgment during that 42 days. In that regard, counsel declared that it makes this application one year out of time and the discretion to extend time to set aside may only be exercised within the original time period allotted for setting

aside the registration. Additionally, according to counsel, the suspension of execution is only available within the period of the "nisi" order, which, counsel pointed out, has already expired.

[34] Counsel also noted that Part 72 is given equivalent force of law by virtue of Section 5 of The Judgments (Foreign) (Reciprocal Enforcement) Act 1936. However, as will be seen later, the 1936 Act is not applicable.

[35] Counsel also relied on the case of **Kriegman v Wilson** 2016 BCC 122, where it was held that failure to bring the application within the prescribed period was fatal and the court had no power to relieve a party form the prescribed statutory limitation period. Counsel argued that even though there may be attempts to distinguish this case on the basis that the limitation period is codified in the relevant Canadian statute, the legislation empowers Part 72 of the rules and gives it the effect of statute, in relation to foreign judgments.

[36] Counsel also placed reliance on the judgment of Brooks, JA in **Marilyn Hamilton v United General Insurance 2018 JMCA App 25.** Counsel asked the court to note that in that case, the application to set aside or vary the order was made a mere fifteen (15) days after the order they sought to have varied.

[37] Counsel also argued that the documents submitted to show fulfilment of order 2 of the foreign judgment that 45% of the shares of the 1st applicant were transferred, consist of a letter and a copy of the share register (exhibited at 'AM6' and 'AM7' in the affidavit of Alton Morgan filed September 28, 2018). Counsel asked the court to note that the share register had not been authenticated in any way and could easily be a document created at anyone's computer. Counsel submitted that if the court was being asked to rely on such a document, there should be some proof of its legitimacy.

[38] Furthermore, counsel stated, the respondent, in support of his application to register a foreign judgment, filed evidence on affidavit (supplementary affidavit of

Winston Finzi in support of fixed date claim form and without notice of application for court orders filed on June 7, 2017) showing email correspondence from Grant Thornton, registered agent for Weststar International Limited to Mr. Winston Finzi and Ryland Campbell on July 14, 2016, where he attached share register and list of directors of Weststar International Limited. Counsel noted that neither the share register nor the list of directors reflected Winston Finzi.

[39] Counsel also claimed that searches at the St. Lucian Registry of International Business Companies and International Trusts revealed that the company "Weststar International Limited", being the 1st applicant, had been struck from their register of International Business Companies, as of 2018.

The law

[40] This case is governed by statute as well as the CPR. Since both counsel made submissions based on two separate pieces of legislation, I find it necessary to say something with regard to which of the two pieces of legislation is applicable. The registration of this judgment was made pursuant to the Judgments and Awards (Reciprocal Enforcement) Act 1923 (the 1923 Act) but both counsel in this application, made submissions on two different legislations, the first which is mentioned above, and the second is The Judgments (Foreign) Reciprocal Enforcement Act 1936 (the 1936 Act). However, the only relevant consideration is the provisions of the 1923 Act but I will say something more on the 1936 Act later in this judgment.

The Judgment and Awards (Reciprocal Enforcement) Act 1923

[41] In the 1923 Act, judgment is defined in section 2 as "any judgment or order given or made by a Court in any civil proceedings... whereby any sum of money is made payable"... The 1923 Act specifically makes provision for judgment and awards from the United Kingdom Courts but it also empowers the Governor General to make orders, pursuant to section 6, for its provisions to extend to any other

Commonwealth country. Such orders have been made for several Commonwealth countries, including St Lucia (197/25). Therefore, the provisions of the 1923 Act extends to the judgments from the superior courts of St Lucia.

[42] Section 3 of the 1923 Act gives the judgment creditor 12 months, after the date of the judgment, within which to apply to register the judgment. The same section however, gives the court the power to extend the time for registration, if in all the circumstances of the case, it thinks it is just and convenient that the judgment should be enforced. This judgment was registered, at the discretion of the court, long after the 12 months period had expired.

[43] Section 3(2) provides:

> *"(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 that Court; or*
>
> *(c) The judgment debtor, being the defendant in the proceedings was not duly served with 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 agreed to submit to the jurisdiction of that Court; or*
>
> *(d) The judgment was obtained by fraud; or*
>
> *(e) the judgment debtor satisfies the registering 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 registering Court.*
>
> *(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 original obtained or entered up on the date of registration in the registering Court;***

(b)the registering 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) ...

(4) Rules of court shall provide –

(a) for service on the judgment debtor of notice of the registration of a judgment under this section: and

(b) for enabling the registering Court on an application by the judgment debtor to set aside the registration of a judgment under this section on such terms as the Court thinks fit; and

*(c) for suspending the execution of a judgment registering under this section until the expiration of the period during which the judgment debtor may apply to have the registration set aside." **(Emphasis mine**)*

[44] Section 5 states:

> *"Provision may be made by rules of court for regulating the practice and procedure (including scale of fees and evidence), in respect of proceedings of any kind under this Act."*

So whilst section 3(4) makes it mandatory for rules to be made with respect to; (a) notice of registration on the debtor; (b) application to set aside registration by the debtor and (c) for suspension of the execution of the foreign judgment, section 5 gives the rules committee the discretion to make additional procedural rules with respect to proceedings under the Act. Section 6 provides for the Governor General in Council to make orders declaring that it shall extend to judgments obtained in a Superior Court in any other part of the Commonwealth which have reciprocal provisions. As I said earlier such an Order has been made for St Lucia under this 1923 Act.

[45] Once a foreign judgment qualifies for registration, is so registered and is not set aside, it has the same force and effect, and is to be treated in the same manner for the purposes of execution, as if were a judgment originally emanating from this court.

The Judgments (Foreign) Reciprocal Enforcement Act 1936

[46] Counsel for the respondent submitted that the Judgments (Foreign) Reciprocal Enforcement Act of 1936 (the 1936 Act) is applicable. Similar submissions had been made by counsel at the application for leave to register the foreign judgment. Part 1 of the 1936 Act deals with the 'registration of foreign judgments'. Section 3 of that part states:

> (1) "The Governor-General in Council, if he is satisfied that in the event of the benefits conferred by this Part being extended to judgments given in the superiors courts of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgments given in the Supreme Court of Jamaica, may by order direct –
>
> a) that this Part shall extend to that foreign country; and
>
> b) that such courts of that foreign country as are specified in the order shall be deemed superior courts of that country for the purposes of this Part.
>
> (2) Any judgment of a superior court of a foreign country to which this Part extends, other than a judgment of such a court given on appeal from a court which is not a superior court, shall be a judgment to which this Part applies, if –
>
> a) it is final and conclusive as between the parties thereto; and
>
> b) there is payable thereunder a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; and
>
> c) it is given after the coming into operation of the order directing that this Part shall extend to that foreign country.
>
> (3) For the purposes of this section, a judgment shall be deemed to be final and conclusive not withstanding that an appeal may be pending against it, or

that it may still be subject to appeal, in courts of the country of the original court."

[47] Section 9 of the 1936 Act, also provides that the Governor General in Council has the power to order that it be made applicable to the Commonwealth and to judgments obtained in the courts of the Commonwealth, as it applies to foreign countries and the judgments obtained in those foreign countries.

[48] The 1936 Act is therefore, for the registration of judgments from foreign countries, not members of the Commonwealth, but for whom, by reason of comity and reciprocity, it is thought that such judgments should be recognised and registered. The 1936 Act currently only applies to the United Kingdom by Order in Council of the Governor General. Therefore, despite reliance on the 1936 Act by both sides (partially and alternatively in the case of the applicant and fully in the case of the respondent) it is of no applicability to the judgment from the Superior Court of St Lucia.

The common law position

[49] There is no basis in any of the Acts for the registration of a non-monetary foreign judgment and such judgments have to be enforced at common law. The CPR would not apply to judgements registered at common law. In this case, parts of the judgment was non-monetary but counsel at the time of the application to register the foreign judgment had convinced this court that since part of the judgment was monetary, it qualified for registration. By virtue of section 3 of the 1923 Act, the fact that part of the judgment contained a money judgment, this court had taken the view that it qualified for registration under that Act.

The applicable rules

[50] Part 72, of the CPR deals with the enforcement of foreign judgments. Rule 72.1 outlines the scope of the rules and rule 72.1 (b) indicates that part 72 applies to both Acts. In rule 72.1 (c) it is indicated that part 72 takes effect subject to the

requirements of the Acts. Rule 72.2 provides that the application to register may be made without notice but must be supported by affidavit exhibiting the judgment or a verified or certified or otherwise duly authenticated copy of it. Rule 72.4 provides for an order for leave to be granted to register a foreign judgment and for a time period to be set, in the order for leave, for the defendant to apply to set aside the registration.

[51] The relevant rules under part 72 are; rules 72.4; 72.6; 72.7 and 72.8. Rule 72.4 "Order for registration" states as follows:

> *"72.4 (1) An order giving leave to register a judgment must be drawn up by, or on behalf of, the judgment creditor.*
>
> *(2) Except where the order is made following an application on notice, if need not be served on the judgment debtor.*
>
> *(3) The order must state the period within which an application may be made to set aside the registration and contain a notification that execution on the judgment will not issue until after the expiration of that period.*
>
> *(4) The court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, extend the period (either as originally fixed or as subsequently extended) within which an application to have the registration set aside may be made.*
>
> *(5) The court hearing the application may direct that notice be given to any person."*

The order giving leave to register the foreign judgment was made in this court on 13 June 2017, on a without notice application by the judgment creditor.

[52] Rule 72.6, "Notice of registration", states:

> *"72.6 (1) Notice of the registration of a judgment must be served on the judgment debtor by delivering it to the judgment debtor personally or in such other manner as the court may direct.*

(2) *Service of such a notice out of the jurisdiction is permissible without leave, and rules 7.8, 7.9 and 7.10 apply to such a notice as they apply in relation to a claim form.*

(3) *The notice of registration must state-*

(a) full particulars of the judgment registered and the order for registration,

(b) the name and address of the judgment creditor or of the judgment creditor's attorney-at-law or agent on whom any summons issued by the judgment debtor may be served;

(c) the right of the judgment debtor to apply to have the registration set aside; and

(d) the period within which an application to set aside the registration may be made."

[53] In the orders made 13 June 2017 for leave for the foreign judgment to be registered, order 2 of those orders set a period of 42 days to apply to set the registration aside after service of the order of registration on the judgment debtor. Accordingly, pursuant to rule 72.4 and rule 72.6, the appellant had 42 days after the judgment was registered and served with the requisite notice, to apply to set it aside. The respondent had a duty, pursuant to the rules, to give notice to the applicant that the judgment was registered by order of Sykes J (as he then was) and thereby notifying him that he had the right to apply to set it aside and that the court had given him 42 days within which to do so.

[54] Rule 72.7 "Application to set aside registration" states:

"72.7 (1) An application to set aside the registration of a judgment must be supported by evidence on affidavit.

(2) Where the court hearing an application to set aside the registration of a judgment is satisfied that the judgment falls within any of the cases in which a judgment may not be registered under the provisions of the Acts it must set aside the registration.

(3) Where the court hearing an application to set aside the registration of a judgment is satisfied that –

(a) It is not just or convenient that the judgment should be enforced within the jurisdiction; or

(b)There is some other sufficient reason for setting aside the registration, it may order the registration of the judgment to be set aside on such terms as it thinks fit."

[55] Rule 72.8 "Issue of execution" states:

"72.8 (1) Execution may not issue on a judgment registered under the Act until after the expiration of the period which, in accordance with rule 72.4 (3), is specified in the order for registration as the period within which an application may be made to set aside the registration or, if that period has been extended by the court, until after the expiration of the extended period.

2) Where an application is made to set aside the registration of a judgment, execution on the judgment may not issue until after the application is finally determined.

3) Any party wishing to issue execution on a registered judgment must file at the registry an affidavit of service of the notice of registration of the judgment and any order made by the court in relation to the judgment." (Emphasis added)

Discussion and analysis

Issue1 – Whether the court has any inherent jurisdiction to set aside the registration of a foreign judgment after the time allotted to do so has expired

[56] The statutory regime relevant to the enforcement of judgments from St Lucia is the 1923 Act, although both counsel referred to the two separate Acts in their submissions. Counsel for the applicant relied on sections of both Acts. Counsel for the respondent relied entirely on the 1936 Act. They cannot entirely be faulted. The 1936 Act refers to judgments from all foreign countries to which the Governor General directs by order that he is satisfied that the country will give substantial reciprocity of treatment to enforcement of judgments from the Supreme Court of Jamaica. The 1936 Act also gives power to the Governor General in Council to order that it shall apply to the Commonwealth and to judgments obtained in the

courts of the Commonwealth. As was said earlier an Order was made in respect of the United Kingdom only. Again, the 1936 Act has no applicability to St Lucia.

[57] This application to set aside the registration has become necessary because there has now been produced to this court an authenticated order from the Supreme Court of St Lucia which corrected the judgment which was presented for registration. Apparently, the court had made an error in drafting the order in the first judgment and order 3 had omitted the words "in the alternative". The effect would be that order 3 would be an alternate order to order 2.

[58] The correction to the order which was entered on 22 November 2013 and made on 7 November 2013, as was stated earlier, is as follows:

3) "The order dated 4th October, 2012 be corrected, pursuant to CPR 2000 Part 42:10 (1), by adding the words "In the alternative" to paragraph 3 so that it reads:- "In the alternative, that the defendants do pay to the claimant 45% of any monies obtained upon the sale of any or all of the assets of the 1st defendant."

4) No order as to costs."

The order of registration in this court makes no reference to "In the alternative" and therefore does not correctly reflect the final judgment of the St Lucian Court.

[59] It is important to the applicant that the correct order is registered. This is because the applicant has already complied with order 2. If the foreign judgment is not set aside the applicant will have to comply with order 3 as well as order 2, and not in the alternative as the St Lucian High Court intended.

[60] It is, however, important to the respondent that the foreign judgment is not set aside. This is because the respondent is sceptical that order 2 has been complied with. Even if order 2 had been complied with, according to the respondent, it is of little value to him, as the company has been deregistered. It is, therefore, important

to the respondent to be able to benefit from the enforcement of order 3 as registered, even though by virtue of the correct judgment of the St Lucian Court, if order 2 has been complied with the respondent is not entitled to order 3.

[61] The question is whether this court lacks the jurisdiction to amend its orders to reflect the true judgment of the St Lucian Court or to set aside the judgment because the applicant is out of time.

[62] It should be noted that the judgment which was registered carried a stamp of authentication by the St Lucian Court with a date in 2016, which is long after the order for correcting the judgment was made and perfected in that court. In that regard it is unclear how the respondent was issued with an authenticated copy of the judgment without the accompanying authenticated copy of the order correcting it, since the correction would not appear on the face of the original judgment. The respondent ought to have been issued with both documents and both documents ought to have been produced to this court at the application for leave to register.

[63] The submissions made by counsel, on behalf of the respondent, with regard to the timing of the application, is entirely persuasive. There is a time limit set by the rules within which the applicant is competent to make an application to set aside the registration of a foreign judgment in this court. The power to extend time is also limited to a period before the time allotted had expired.

[64] There is no doubt in my mind that had the applicant made this application within the 42 days given under the order, all else being equal, the order for registration of the judgment would have had to be set aside for good reason. However, I agree with counsel for the respondent that there is no power under the rules to enlarge time, outside of what is provided for in rule 72.4(4).

[65] I have considered the case of **Kriegman v Wilson** [2016] BCCA 122 cited by counsel for the respondent. I find the reasoning and conclusion unassailable on the peculiar facts and issues in that case. The facts are unimportant except in the

briefest way to state that bankruptcy proceedings were taken in the Washington Court and judgment was given for the payment of a sum of money, which affected the appellant who was not a party to the proceedings and was never served in the Washington Court. The judgment was registered in the Supreme Court of British Columbia and served on the appellant in April 2013. According to the law she had 1 month in which to apply to set it aside but it was not until September before she realised that the suit had been filed in the Washington Court, for which she was never served. That would have been a basis to set aside the foreign judgment, as of right, under the COEA.

[66] The case concerned the effect of section 28 of the COEA, which is the definition section and section 29 which outlines the requirement for registration of a foreign judgment. Section 33 of the COEA deals with the effect of registration of a foreign judgment and section 34 provides for the notice of the registration, which must be served and the period after service within which application may be made to set it aside.

[67] In that case the application to set aside was made 16 months after the time prescribed. The court, at first instance, held that the failure to apply within the stipulated period was fatal. The judge found that he had no jurisdiction to relieve against a statutory limitation period. The appellate court agreed with the judge at first instance, holding that the one month limitation was a statutory prescription, against which it had no power to grant relief. The appellate court also considered whether it should set aside the order on the basis that it was void ab-initio for want of jurisdiction to grant it under section 29 of the Act. The court found that the defects in the jurisdiction were grounds available to the appellant to apply to set aside the registration within the allotted time. In failing to do so, by characterizing a defect in the process as being a nullity, the appellant could not escape the application of section 34, as a matter of statutory interpretation.

[68] The court made a distinction between cases where it could overlook irregularities or had to set aside an order for want of jurisdiction and observed that none of those

cases involved any suggestion that the court was relieving against a statutory limitation period. The appeal court also rejected the notion that inherent jurisdiction was any basis upon which the statutory procedure and prescription set out in s 34 of the COEA could be avoided.

[69] Applying that approach to this case, it would appear that this court has no power to relieve the applicant from the effects of a statutory time limitation. The general case management powers to enlarge time is inapplicable, as that rule (rule 26.1 (2) (c) does not apply, where the rules provide otherwise.

[70] Counsel for the applicant resorted to the overriding objective and to the court's inherent jurisdiction. With respect to the overriding objective, it has been made clear in numerous authorities, that the overriding objective cannot be resorted to in order to override a clear statutory prescription. Where the plain language of the rule prescribes the powers of the court, the rule will prevail. This court cannot apply the overriding objective to extend time, because the plain language of rule 72.4 (4) and 72.8 (1) oust the general case management powers of the court under rule 26.1 (c), which begins "Except where the Rules provide otherwise". So although there is a general power to extend time in rule 26.1 (2) (c), rule 72.4 (4) provides otherwise. The overriding objective cannot be used to override these rules and therefore it cannot assist the applicant. See **Vinos v Marks& Spencer** [2001] 3 All ER 784.

[71] Neither can the court use its inherent jurisdiction to change a clear statutory provision or rule, no matter how deserving the case. See **Godwin v Swindon Borough Council** [2001] 4 All ER 641. In **Treasure Isles and others v Audubon Holdings Ltd** [BVI] Civil Appeal No 22 of 2003 unreported (judgment delivered 20 September 2004) Saunders JA (Ag) (as he then was) said at paragraph 24:

> *"Although I have distinguished the cases of **Vinos** and **Godwin,** this is not to say that those cases do not contain very helpful statements on the approach that should be taken with respect to the relationship between the overriding objective and specific provisions of the rules.*

> *In particular, it must not be assumed that a litigant can intentionally flout the rules and then ask the Court's mercy by invoking the overriding objective. I completely adopt Mr. Bennett's submission that the overriding objective does not in or of itself empower the Court to do anything or grant to the Court any discretion. It is a statement of the principle to which the Court must seek to give effect when it interprets any provision or when it exercises any discretion specifically granted by the rules. Any discretion exercised by the Court must be found not in the overriding objective but in the specific provision itself. As May LJ stated in* ***Vinos, '****Interpretation to achieve the overriding objective does not enable the Court to say that provisions which are quite plain mean what they do not mean, nor that the plain meaning should be ignored."*

[72] The overriding objective itself does not empower the court to do anything or grant it any special discretionary power to do what it thinks is right in a deserving case but it is a statement of principle which must be borne in mind when interpreting and applying the rules; especially where the court is exercising a discretionary power or acting under its inherent jurisdiction.

[73] The court also has the inherent jurisdiction to set aside an order made *ex-parte*, if new facts come to light which clearly show that the ex-parte order ought not to have been made. See **Superior Security Co Ltd v General Accident Insurance Co** [1992] 29 JLR 401 at 406, and the cases there cited and especially the Privy Council decision in **Minister of Foreign Affairs Trade and Industry v Vehicle and Supplies Ltd and others** [1991] 1 WLR 550. However, none of these cases involved the court overriding statutory prescriptions and rules as to limitation of time.

[74] I, therefore, conclude that this court has no inherent jurisdiction to set aside a registered foreign judgment, after the time allotted to do so has expired.

Issue 2 – Whether the court has any inherent jurisdiction to amend the order of registration to reflect the correct judgment of the foreign court

[75] The applicant contends that the court can use its inherent jurisdiction to set aside the incorrect judgment, as it is not the final and conclusive judgment affecting the

issues between the parties, and register the correct judgment. The respondent says that the court has no such inherent jurisdiction in this particular case, as the matter is covered by statute and the rules. I agree with counsel for the respondent. This court has no inherent jurisdiction to set aside the foreign judgment outside of statute and the rules. It also has no jurisdiction to correct the judgment of a foreign court. What this court has is an inherent jurisdiction to vary or correct its own judgments or orders to make its meaning or its intentions clear. Any order or judgment of this court can be corrected under the slip rule, to give effect to the intention of the court.

[76] In this case the court did intend to register the judgment of the St Lucian Court made between the parties on the 4 October 2012. The correction made by the St Lucian Court on the 7 November 2013 and entered on the 22 November 2013 in the presence of the attorneys for both parties, is retrospective in effect, so that the correction is to be read as one with the original orders. The authenticated copy of the judgment presented by the judgment creditor for registration in these courts, has to be read as if the correction was written into it. The intention of this court was to register the judgment of the St Lucian Court which decided the rights and liabilities of the parties and which was the correct judgment at the time of registration. This court was, therefore, led into error to make an order it did not intend to make, that is an order to register a judgment that was not the judgment of the St Lucian Court. That was not the intention of this court and therefore, the court has the jurisdiction to amend its orders to reflect the order it intended to make.

[77] A Court can amend at any time, the terms of the order to give effect to its real intention. See **Bristol Myers Squibb Co v Baker Norton Pharmaceutical Inc** [2001] RPC1; **Smithkline Beecham plc v Apotex Europe ltd** [2005] EWHC 1655 CH; [2006] 2 All ER 53 and **Swindale v Forder** [2007] 1 FLR 1905. In **Michael Beckford, Junior Birch and Joel Shaw v The Queen PC** (1993) 30 JLR 311, the Privy Council ordered cost in the appeal against the Crown. The crown petitioned to have it set aside. The Privy Council held that the order for costs arose out of a

misunderstanding and should not have been made. The Privy Council ordered that, utilizing the slip rule, the reference to costs would be deleted from the order made.

[78] A judgment which contains unintentional errors may be set aside or corrected. **See Purrel v FFC Trigell Ltd** [1971] 1 QB 358. Rule 42.10 (1) of the CPR codifies what we have come to know as the slip rule. It gives this court the power at any time, without the necessity for appeal, to correct a clerical mistake in a judgment or order or any error in the judgment or order arising from an accidental slip or omission. Such corrections may become necessary to bring the order drawn up in conformity with what the court intended to pronounce. (See the statement of Morrison P in **Dalfel Weir v Beverly Tree** [2016] JMCA App 6 at paragraph [17]).

[79] In **Digi Order Jamaica Limited v Dennis Atkinson** Phillips JA, who gave the judgment of the court, said at paragraph 15 that:

> *"In my view, the court is empowered to correct an error by virtue of its inherent jurisdiction in order to ensure that the court's intention was manifest and operative. As I stated at paragraph [65] in Weir v Tree, this court has the jurisdiction to correct an order made by the court that does not express the intention of the court, but it cannot rehear or alter the order made."*

[80] In my view the order registering the foreign judgment in its incorrect terms, resulted from the court being misled, by the absence of the full orders of the foreign court, into registering the incorrect judgment of that court. This court had no intention of registering a judgment which was not the judgment of the foreign court. Different considerations might well apply if the judgment had been corrected after it was registered in these courts. But the correction was made years before it was registered here, and if the respondent (who is taken to have known of the amendment by virtue of the knowledge of his attorneys who were present and who filed the order correcting the judgment in St Lucia) had brought the order correcting the judgment to this courts attention, there is no doubt that the correct order of registration would have been made. The judgment of the St Lucian Court is what

it is, and that's what the court intended to order to be registered, not that, which in effect, does not exist. The failure to include the words "in the alternative" in the judgment registered is an omission, which this court can correct. I should point out that there are even errors in the way in which the respondent drafted the orders for the signature of Sykes J. The orders of the St Lucian Court are drawn up numerically, so that the correction made by that court is made to order 3 of those court orders. The order registering the judgment in these courts is drawn up in alphabetical order, so that the order of correction referring to paragraph 3 would find no comparable reference in the order signed by Sykes J which references paragraph (c).

[81] For this court to make the necessary corrections to the order, in my view, is not a rehearing or an altering of the orders made but a simple correction of an error of omission, in order to make manifest, the courts real intentions.

[82] I conclude therefore, that this court has the inherent jurisdiction to amend its orders to reflect its true intention, which was to order the registration of the judgment of the St Lucian High Court. In that regard the court is not functus.

Issue 3 – What is the effect, if any, of the respondent's failure to comply with the rules as to the service of the notice under rule 72.6?

[83] Counsel for the respondent rest their submission on their compliance with the rules as to service on the applicant, on the fact that the order for leave to register and the order registering the judgment were served on the applicant personally. They have exhibited two affidavits of service sworn to by the process server Jamaro Campbell, to that effect.

[84] Unfortunately, it seems to me that my interpretation of the rules and that of counsel for the respondent, with respect to the duty of the respondent to notify the applicant, differs in every material particular. In the first place rule, 72.4 is the prescription for an order for leave to register, which by virtue of 72.4 (2) need not be served on the judgment debtor. So the fact that the order is mandated to

contain a period within which the registration is to be set aside and a notification that the judgment will not be executed is, at that stage, for the benefit of the judgment creditor and the court only, since it is not an order which needs to be served on the judgment debtor. It merely sets the period, which must be contained in the notice of registration to the judgment debtor, that he will have to set aside the registration once the judgment is registered. If the judgment debtor is never served with the ex-parte order for leave, (which the rule says he need not be), he would never know that an order for leave was made or the period set therein, until after the registration and he receives the notice of it.

[85] So unlike counsel for the respondent, I do not accept that the applicant had 42 days to set aside the order for leave at the 'nisi stage', as counsel puts it. Rule 72.4 (3) says the order must state the period to set aside "the registration" not the order for leave to register. So even though a direction was made for the order for leave to be served on the judgment debtor, the period in the order would not begin to run until after the order of Sykes J, which was the order for registration.

[86] Rule 72.6 makes it clear that notice of the registration must be served on the judgment debtor. Unlike in rule 72.4 where there is a discretion whether to order service of the order for leave or not, there is no discretion under rule 72.6. Notice of the registration not only must be served personally, the rule list the information it must contain. Rule 72.6 (3) sets out the list of what the notice must contain. In rule 72.6 (3) (a) it states that the notice must contain the full particulars of the judgment registered and the order for registration. In rule 72.6 (3) (b) it must carry the name and address of the judgment creditor or of the judgment creditor's attorney-at-law or agent on whom any summons issued by the judgment debtor may be served. Rule 72.6 (3) (c) states that it must state the right of the judgment debtor to apply to have the registration set aside and in rule 72.6 (3) (d) it sets out the period within which an application to set aside the registration may be made.

[87] The period set by the court in the order for leave is the period which the judgment creditor is to insert in the notice. No evidence was led by either side that any such

notice was sent to the applicant. In fact, it is clear from the two affidavit of service of Jamaro Campbell, that no such notice was served. The order of Sykes J was served on the applicant personally. This was not the notice. No period was mentioned in the order of Sykes J which was served on the judgment debtor and no such notice containing the period to apply to set aside or any of the other stipulations in 72,6 (3) was served on the judgment debtor. Even though the period was set out in the order for leave, the notice, whether issued separately or on the order of Sykes J, should have also been served. The judgment debtor should, therefore, have been notified that he had a right to set aside the registration made by Sykes J and had forty-two days after service of the registration to set it aside. The application to set aside would be an *inter-partes* hearing, thus the requirement in the notice for an address for service of the 'summons'.

[88] The respondent cannot rely on the service of the order for leave dated 13 June 2017 as the basis of notice to the applicant. Therefore, based on the correct interpretation of the rules, although the applicant did not apply forty-two days after the registration of the foreign judgment, the respondent had not in fact complied with the rules with respect to the service of a notice of registration on the applicant. Therefore, the applicant in real terms had not been notified of his right to set the registration aside and the period within which he could set it aside. This begs the question as to what is the effect of such a failure on the registration, if any.

[89] Section 3 (4) of the 1923 Act mandates that the rules of court shall provide for the service on the judgment debtor of the notice of the registration of a judgment under the Act, for setting aside the registration and for suspending execution. This shows the importance of the service of the notice. Also there can be no execution on the foreign judgment, if the affidavit of service of the notice is not filed at the registry (see rule 72.8 (3). Section 5 also provides for rules of court to be made to regulate the practice and procedure, in respect of proceedings of any kind under this Act. The CPR does provide for service on the judgment debtor of the notice of the

registration but the rules are silent as to what is to happen if such notice is not given.

[90] That being the case, the respondent having failed to comply with the rules as to service of the notice, this court is not *functus.* Having determined that the court is not *functus*, the next question is what is the approach that the court ought to take?

[91] Section 3 (5) of the 1923 Act makes a registered judgment of the same force and effect for the purposes of execution as a judgment issued out of this court, subject only to the provisions with respect to setting aside of the registration. This judgment, once it is registered is to be treated as if it is a judgment of this court for enforcement purposes.

[92] Under Part 43 which deals with enforcement, rule 43.3 speaks to judgments subject to conditions and states:

> "43.3 (1) A person who has a judgment or order subject to the fulfilment of a condition may not enforce the judgment or order unless-
>
> a. The condition is fulfilled; or
>
> b. The court gives permission for the judgment or order to be enforced.
>
> (2) Where a person has the benefit of a judgment or order subject to fulfilment of a condition and there is a failure to fulfil that condition, then unless the court otherwise orders-
>
> (a) That person loses the benefit of the judgment or order; and
>
> (b) Any other person interested under the judgment or order may take any steps which-
>
> (i) Are warranted by the judgment or order; or

(ii) Which might have been taken if the judgment or order had not been given."

[93] This rule is in keeping with general principles and practice. In Halsbury's Laws of England 3rd edition Volume 22 "Service of Judgments and Orders" references the fact that some orders, by their nature, require service to make them operative. Judgment and orders requiring warning or penal notices are some such. Those judgments require an endorsement on the order before it is served. Failure to serve such warning notices is fatal to its enforcement (see **Hampden v Wallis** [1884] 26 CH D 746 CA. The question which would arise in such circumstances is whether there has been a breach of natural justice occasioned by the failure to notify. The courts have routinely held that because of the effect of failing to comply in time, these rules must be strictly obeyed. The process must be strictly carried out or else the order will be set aside or at the very least no process will be issued to enforce it. See also the case of **Vance Lewis v Joyce Lewis** Claim No BVIHMT 2008/0062 unreported (Judgment delivered November 30, 2010) in the Eastern Caribbean Supreme Court, in contempt proceedings, where there was a failure to endorse the penal notice on the order. The court ordered that no service would be issued to enforce such an order and applied **Hampden v Wallis**.

[94] In **Bruce Golding v Pearnel Charles** (1991) 28 JLR 247, a decision pre CPR, Carey JA at 254 referring to the failure to adhere to certain provisions in the Civil Procedure Code, said that, in his view, "there may well be some failures to comply with the code which a court would be constrained to hold, were so serious as to render the proceedings a nullity".

[95] In **Silvera Adjhoda v Cherietha Lalor** [2016] JMCA Civ 52, the Court of Appeal of Jamaica, dealing with a case, also for committal and attachment orders, where there was a failure to endorse and serve the penal notice on the court order, referred to the principles in **Hampden v Wallis** as well as **Gordon v Gordon** [1946] 1 All ER 247. In **Gordon v Gordon** it was held that the order would only be enforced if the rules were strictly complied with. It was said per curiam that:

> *"Where an order requires a person to do a specific act it is important that the place as well as the time of performance should be precisely stated, so that the person required to obey the order may be in no doubt as to what he is required to do."*

[96] It was said further that:

> *"It is well established that if an order requiring the doing of an act by a certain time is not served before that time has expired, committal or attachment cannot be given for disobedience. The only exception is where the person required to obey the order is evading service. It is not enough that he may have been aware of the order, or even that he was present in court when it was made."*

The court held that regardless of the fault of the defaulting party, the rules must be strictly obeyed. The court of Appeal in Silvera Adjhoda v Cherietha Lalor also referred to the case of Stewart v Sloley and others [2011] JMCA Civ 28 where Morrison JA (as he then was) said at paragraph 37 that:

> *"(iv) [R]ules of court requiring the service of an order with a penal notice endorsed thereon in certain specified circumstances, as a precondition to committal or confiscation of assets as the punishment for breach of the order also have a long history, are not to be regarded as wholly technical and must be strictly complied with (**Iberian Trust, Benabo)**…"*

[97] The Court of Appeal in **Silvera Adjhoda v Cherietha Lalor** found that, in the absence of the penal notice, the application for attachment was defective for want of strict compliance with the rules. The court also cited **Ramdat Sookraj v Comptroller of Customs and Excise** [1992] 48 WIR 163 at 168, where it was said that the alleged contemnor was "entitled to take advantage of any procedural irregularities that may be available to him in order to avoid the consequences of his failure to comply." In that case Chancellor George said at page 174:

> *"the other irregularity concerns the failure to indorse the penal admonition on the order, which is one that requires the doing of something as a requirement of Order 35 Rule 5. Here again I agree with the Full court that this omission was a fatal objection to the Appellants quest for an order for committal or attachment (see Hampden v Wallis (1884 26 CH D 746)."*

[98] In this case the order was granted but the judgment debtor was required to do an act, this made the order for registration conditional. Having failed to carry out the condition, no execution will be permitted to issue on this foreign judgment. Failure to comply with a statutory requirement includes the rules made pursuant to a statute and is a fundamental defect (**Smurthwaite v Hanney** [1894] Ac 494).

[99] The respondent relied on rule 72.8 in his objection to the application to set aside the order of registration of the foreign judgment to have it corrected to reflect the true judgment of the court. But rule 72.8 also has the effect of 'hoisting the respondent on his own petard' because it is that same rule which requires an affidavit of service of the notice to be filed at the registry before it can issue execution on the judgment. The respondent is attempting to enforce this judgment but no such notice was served and no such affidavit of service has been filed. That notice and the affidavit of service in proof of service of it is a condition precedent to the enforcement of the foreign judgment and if that condition has not been fulfilled the judgment cannot be enforced.

Issue 4 – Whether, in any event, the court has any inherent jurisdiction to stay execution of the registered foreign judgment

[100] Even if I were wrong in my conclusions on issues 2 and 3 and my interpretation of the rules relevant to those two issues, the applicant is still not without remedy. For it seems to me that, it having been brought to the court's attention that a foreign judgment has been registered, which is in its very essence, not the true judgment of the foreign court whether final and conclusive or provisional, such a judgment ought not to be enforced by this court. For if it is so enforced, this court would have lent itself to the perpetration of a falsehood and that would certainly tend to bring the administration of justice into disrepute and the integrity of this court into question. If the wrong judgment was registered, the courts hands are not tied by these rules or the timing set out in the Act, as far as the enforcement of such a judgment is concerned.

[101] What must be remembered is that by virtue of section 3(3) of the 1923 Act, this court has the same control over the foreign judgment as it would have over a judgment emanating originally from these courts. Under Part 42 of the CPR, rule 42.13, a judgment debtor may apply to the court to stay execution of a judgment or other relief on the grounds of:

a) "matters which have occurred since the date of the judgment or order; or

b) facts which arose too late to be put before the court at trial, and the court may grant such relief, upon such terms, as it thinks just."

[102] To its credit, the applicant is not applying for the judgment to be set aside without more, it simply ask this court to register the correct judgment and not allow the respondent to enforce it without it reflecting the correction made by the St Lucian Court.

[103] It is unfortunate that the rules allow only for a claimant to register a foreign judgment and the reason for that may well be obvious and understandable. However, in this particular case, the defendant is in possession of an order of the foreign court but he cannot register it because the rules do not allow. In the meanwhile, the respondent has registered a judgment without indicating the existence of a correction to that judgment (and in saying so I am a not to be taken as casting any blame on the respondent if the St Lucian Court issued an authenticated copy of the original but failed to issue along with it, the authenticated copy of the order correcting it).

[104] A judgment of this court may be amended or set aside, even at the enforcement stage, if it is made clear to the court, either below or on appeal, that the wrong judgment is being enforced. A judgment will be set aside for irregularity if it is entered for too large a sum as in **Long Yong Ltd** v **Forbes Manufacturing and Marketing** [1986] 40 WIR 229; **Author Badaloo v Mr and Mrs Neville Bryan**

SCCA 98/87 (unreported) judgment delivered 31 July 1989; and see also **Muir v Jenks** [1912] 2 KB 412 and **Benros Company Limited and Bentley Rose v Workers Savings and Loan Bank and others** (1997) 34 JLR 92 at 101.

[105] If this court would not allow the wrong judgment originally emanating from it to be enforced, why would it knowingly allow the wrong judgment of a foreign court to be enforced here, even if the application to set it aside is late? I am of the view that there is sufficient authority to support the position that this court can refuse to enforce a judgment, even a judgment of a foreign court registered in these courts, if the judgment is incorrect, in which case it would be unjust to allow execution to issue on it.

[106] I do not think that the 1923 Act and Part 72 oust the court's inherent jurisdiction to act to protect its own processes, and it certainly does not do so at the enforcement stage, since both the 1923 Act and the rules gives this court power and control over foreign orders and judgments registered here. That is the difference between this case and the case cited by counsel. That court did not have to wrestle with knowingly enforcing a wrong judgment. The basis on which an application to set aside was made in the case of **Kriegman v Wilson**, was that the appellant had not been served with process and had not submitted to the jurisdiction of the Washington Court. That was an irregularity of the kind which can be waived. This case, in my view, is fundamentally different. There can be no justification for any court to knowingly enforce a judgment which is the wrong judgment of the court and where one party would be severely prejudiced by it doing so.

[107] Since a registered foreign judgment is to be treated the same as a judgment of this court for enforcement purposes, by virtue of rule 42 and on principle, the court can decline to enforce such a judgement, where it is inequitable to do so. **See Mullins v Howell** [1879] 11 Ch D 763 and **Fivecourts Ltd v JR Leisure Development CO Ltd** [2001] L & TR5.

[108] The Supreme Court of Jamaica has an inherent jurisdiction to stay proceedings which are an abuse of its process. In view of that inherent jurisdiction, there can be no restriction on the courts power to order a stay. If the justice of the case demands a stay then a stay ought to be granted. It has been held that it does not matter whether a stay is requested by the claimant or the defendant. See **Chase Merchant Bankers Jamaica Limited and Another v Rosehall Limited and Another** [1982] 19 JLR 176. I would go further to state that the court may of its own motion order a stay.

Conclusion

[109] Although I agree that there is no inherent jurisdiction to set aside the registration of a foreign judgment in these courts, outside of the prescription of the law and the rules, in this case I do not accept that the court is *functus officio* with regard to the order of registration. It was the intention of the court to register the judgment of the High Court of St Lucia made 4 October 2014. The judgment of the High Court of St Lucia made 4 October 2012 is as exhibited by both the applicant and the respondent in this case, that is the original judgment and the order correcting it. Although an authenticated copy of the correction was not presented to this court, along with the original orders, by the respondent, the correction existed at the time of registration and is to be read as one with the original judgment. This court, therefore, having fully intended to register the judgment of the St Lucian High Court as it was on the date of the order of registration, is fully empowered to correct its order to reflect that intention. In doing so, this court is not correcting the St Lucian judgment, which was already corrected at the time of the application for leave to register a foreign judgment but this court is merely correcting its own order to reflect its real intentions.

[110] Even if I am wrong in so doing, and regardless whether I am wrong or right to do so, the judgment is nevertheless unenforceable in this jurisdiction because the respondent has failed to comply with his statutory obligation to give the statutory

notice of the registration to the applicant. The service of the order of registration is insufficient to comply with the statutory requirement for notice to be given.

[111] Apart from any failure to notify, the court has the inherent jurisdiction to protect its own process and will not enforce a judgment which is the wrong judgment of the court.

Disposition

[112] I therefore order that:

(1) The orders for leave to register the judgment of the St Lucian High court made 13 June 2017 and the order registering the said judgment made 24 October 2017 be amended by inserting the words ‘In the alternative” before the words “that the defendants do pay to the Claimants”…

(2) That there be a stay of execution of the said judgment.

(3) Costs of this application to the applicant to be agreed or taxed.