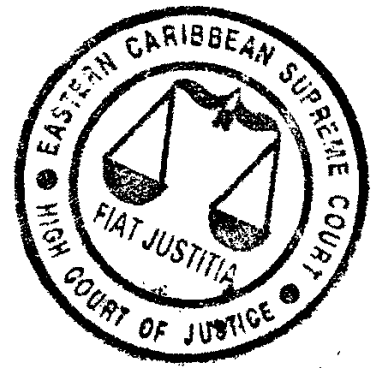


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 299 OF 2003



BETWEEN:

PB NEUMATICO PARTNERSHIP

Claimant

v

CHRISTIAN HOEBRATH

First Defendant

JUDITH JO-ANNE HOEBRATH nee LAVIA

Second Defendant

AND

NATIONAL COMMERCIAL BANK

Third Defendant

Appearances: Mr. Richard Williams for the Claimant
Mr. Emery Robertson for the First and Second Defendants

2006: June 12

2006: July 26

JUDGMENT

- [1] **THOM, J:** This is a claim for damages in the sum of US\$86,100.00, E.C. equivalent of \$233,925.09.
- [2] The Claimant in his Statement of Claim filed on the 30th day of July 2003 alleges that:
- (1) On or about the 12th day of June 2003 the Claimant obtained a judgment for the sum of US\$86,100.00, E.C. equivalent of \$233,925.09, against the Defendants herein from the District Court for Criminal Cases in Vienna 1080 Vienna Landferichtestrasse 11, Vienna, Austria.

- (2) The said judgment is final and conclusive and constitutes an enforceable judgment.
 - (3) The said proceedings arose from the fraudulent activities of the Defendant against the Claimant and for which the proceeds of the said fraud were transferred and are held at accounts presently at the National Commercial Bank, Bedford Street, St. Vincent and the Grenadines in the names of the Defendants.
 - (4) The said judgment sum of US\$86,100.00, E.C. equivalent of \$233,925.09 constitutes a debt by the Defendants and which is due and owing to the Claimant.
- [3] On the 16th day of August 2005 Learned Counsel for the Claimant and Learned Counsel for the First and Second Defendants filed a Statement of Agreed Facts and Issues.
- [4] The agreed facts were stated as follows:
- (1) On the 12th day of June 2003 the District Court for Criminal Cases in Vienna ordered the Defendants to pay the sum of US\$86,100.00 to PB Neumatico Partnership, 32 Kraki Bukit Crescent, No. 050902 Singapore 416262.
 - (2) The said judgment is final and enforceable.
- [5] The agreed issues were stated as follows:
- (1) Whether or not the judgment is for the enforcement of a foreign penal law.
 - (2) Whether or not an order for civil compensation made in a criminal court is enforceable in Saint Vincent and the Grenadines.
 - (3) Whether or not the proper steps to enforce a foreign judgment of Austria is to have registered the judgment debt pursuant to statute or to institute an action on the debt.
 - (4) Does PB Neumatico have any locus standi to invoke the jurisdiction to bring an action in Saint Vincent and the Grenadines either under statute or common law or the Rules of the Supreme Court 2000?

(5) Whether or not the judgment on which the Claimant purported to commence their action in Saint Vincent and the Grenadines was a judgment of an inferior court or a superior court which could be enforced without regard to Part 72 of the Rules of the Supreme Court 2000 and the relevant enforcement of Judgment Act.

[6] On January 16, 2006 Bruce-Lyle J ordered the First and Second Defendants to file submissions on or before January 18, 2006. No submissions were filed by the Defendants. The matter was heard on June 12, 2006. The Claimant made and the First Defendant made oral submissions.

ISSUES NOS. 1 AND 2:

[7] **Whether or not the Order is for the enforcement of a foreign penal law and whether or not an order for civil compensation made in a criminal court is enforceable in St. Vincent and the Grenadines.**

[8] Learned Counsel for the Claimant submitted that the Order is not for the enforcement of a foreign penal law but for the enforcement of civil compensation made in a criminal court and such sum was recoverable in Saint Vincent and the Grenadines as a debt. Learned Counsel referred the court to Conflict of Laws 5th Edition by R.H. Graveson pp. 557 – 558 and the case of Raulin v Fischer [1911] 2 KB p 93 at p. 98 where Hamilton J referred to a passage from Wisconsin v Pelican Insurance Co. which outlined the test to determine whether an action is penal in the following manner:

"The rule that the Courts of no country execute the law of another applies not only to prosecutions and sentences for crimes and misdemeanors, but to all suits in favor of the State for the recovery of pecuniary penalties for any violation of Statutes for the protection of its revenue or other municipal laws, and to all judgments for such penalties" and added "Their Lordships do not hesitate to accept exposition of the law which in their opinion discloses the proper test for ascertaining whether an action is penal within the meaning of the rule. A proceeding in order to come within the scope of the rule must be in the nature of a suit in favor of the State whose Law has been infringed. I have therefore to inquire first of all whether this judgment insofar as it concerns the present plaintiff is one for the satisfaction of a private wrong or for the punishment of an infraction of a public law, and secondly, whether, if it be as regards him only for the satisfaction

of a private wrong it is one which can be separated from the rest of the judgment in spite of the fact that a considerable part of it relates to purely criminal proceedings.”

[9] Apply the test outlined by Hamilton J to the present case, was the judgment one for satisfaction of a private wrong or for the punishment of an infraction of public law and whether if it is for the satisfaction of a private wrong it is one which can be separated from the rest of the judgment so that the Claimant may sue upon it in spite of the fact that a considerable part of it relates to purely criminal proceedings.

[10] An examination of the judgment shows that the matter was heard in the District Court for criminal cases. The judgment against the First Defendant reads:

“Christian Hoebrath owes to pay an amount of US\$86,100.00 to PB Neumatico Partnership, 32 Khaki Bukit Crescent, No. 050902 Singapore 416262 represented by Attorney-at-Law Dr. Arnold Gerscha, Donau-City-Strass 11, Ares-Tower 1220, Vienna.”

The order in relation to the Second Defendant is in the same terms.

[11] Having examined the Order I find that the Order is in relation to payment of a sum owing to the Claimant. It was not in the form of a penalty payable to the State and it can be separated from the rest of the criminal proceedings.

ISSUE NO. 3:

[12] **Whether or not the proper steps to enforce a foreign judgment of Austria is to have registered the judgment debt pursuant to statute or to institute an action on the debt.**

[13] Learned Counsel for the Claimant submitted that a foreign judgment could be enforced in Saint Vincent and the Grenadines pursuant to statute, being the Foreign Judgments (Reciprocal Enforcement) Act Cap. 87 and the Commonwealth Countries Judgments Enforcement Act Cap. 82, and at common law. Learned Counsel further submitted that in the present case the Statutes mentioned above do not apply.

[14] I agree with the submission of Learned Counsel for the Claimant. Section 3 (1) of the Foreign Judgments (Reciprocal Enforcement) Act Cap. 87 provide that the Act applies to judgments of superior courts of a foreign country to which the Act has been extended by Order of the Governor-General. No such Order has been made by the Governor-General in relation to the superior courts of Vienna, Austria. The Foreign Judgments (Reciprocal Enforcement) Act is therefore not applicable.

[15] Similarly Section 6 of the Commonwealth Countries Judgments (Enforcement) Act provides for the Governor-General by Order to extend the provisions of the Act to judgments of a superior court of a commonwealth country. No order has been made in relation to Austria. Austria is not a commonwealth country.

[16] Learned Counsel for the Claimant submitted that the Claimant is entitled at Common Law to institute fresh legal proceedings to recover the sums due under the judgment given in Austria.

[17] Learned Counsel referred the Court to Halsbury Laws Vol. 4 paragraphs 140 and 155, which reads as follows:

“140. **Actions on Foreign Judgments.** Subject to certain qualifications a judgment in personam of a foreign court of competent jurisdiction is capable of recognition and enforcement in England. Apart from statute such a judgment will not be enforced directly by execution of any other process but will be regarded for procedural purposes as creating a debt between the parties to it.”

Paragraph 155 outlines the conditions of enforcement as follows:

“A foreign judgment in personam given by a court of competent jurisdiction is enforceable by action in England provided that:

- (1) it is for a definite sum of money, other than a sum payable in respect of taxes, penalties or multiple damages; and
- (2) it is final and conclusive.”

[18] Learned Counsel for the Claimant submitted that the judgment is for a definite sum of money. It is not in respect of taxes, penalties or multiple damages and the parties agreed in their Agreed Statement of Facts and Issues that the judgment is final and conclusive.

[19] The First Defendant submitted that the judgment of a District Court of Criminal cases of Vienna had to be enforced in Vienna. It was not enforceable in Saint Vincent and the Grenadines since there was no agreement between Saint Vincent and the Grenadines and Austria for the reciprocal enforcement of judgment.

[20] I agree with the submission of Learned Counsel for the Claimant that the judgment is enforceable at common law, all of the conditions for enforcement have been met. Further Redhead JA (Ag.) in Appeal No. 4 of 2004 PB Neumatico v Christian Hoebrath and Judith Hoebrath and National Commercial Bank in considering the principles on which the Court would extend the time for filing an appeal stated at paragraph 22:

In my judgment the applicants have no chance of success on this issue because Neumatico has a right at common law to pursue its claim in the High Court in St. Vincent against the applicants to recover money which Neumatico claims is owing to it..."

ISSUE NO. 4:

[21] **Does PB Neumatico have any locus standi to invoke the jurisdiction to bring an action in St. Vincent and the Grenadines either under statute or common law or the Rules of the Supreme Court 2000?**

[22] No evidence was adduced to show that PB Neumatico was not a legal entity. The judgment which is being sought to be enforced was given in favor of PB Neumatico Partnership. I find that PB Neumatico Partnership has locus standi to bring this claim.

ISSUE NO. 5:

[23] **Whether or not the judgment on which the Claimant purported to commence their action in Saint Vincent and the Grenadines was a judgment of an inferior court or a superior court which could be enforced without regard to Part 72 of the Rules of the Supreme Court 2000 and the relevant enforcement of judgment act.**

[24] Learned Counsel for the Claimant submitted that Part 72 of CPR 2000 was only applicable in relation to the Foreign Judgment (Reciprocal Enforcement) Act Cap. 87. The Claimant is not seeking to have the judgment registered under the said Act, the Claimant action is brought at common law.

[25] I agree with the submission of Learned Counsel for the Claimant. Part 72 of CPR 2000 is applicable to any enactment which makes provision for the registration of a judgment of a foreign court. The Claimant in this case is not seeking to register a foreign judgment.

[26] It is ordered that:

- (1) Judgment is entered for the Claimant.
- (2) The First and Second named Defendants do pay to the Claimant damages in the sum of US\$86,100.00 or its E.C. equivalent of E.C.\$233,925.09.
- (3) The National Commercial Bank do transfer the sum of US\$86,100.00 or its E.C. equivalent of \$233,925.09 held by them on behalf of the First and Second named Defendants.
- (4) The First and Second named Defendants do pay the Claimant costs in the sum of \$2,000.00


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Justice Gertel Thom
HIGH COURT JUDGE