Westacre Investments Inc v The State-Owned Company Yugoimport SDPR (also known as Jugoimport-SDPR)
[2008] SGCA 48

Case Number : CA 141/2006

Decision Date : 30 December 2008

Tribunal/Court : Court of Appeal

Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Khoo Boo Jin, Tan Hsuan Boon and Peter Chia (Wee Swee Teow & Co) for the appellant; Lok Vi Ming SC, Kirindeep Singh and Govindarajalu Asokan (Rodyk & Davidson LLP) and Gabriel Peter, Kelvin David Tan and Calista Peter (Gabriel Law Corporation) for the respondent

Parties : Westacre Investments Inc — The State-Owned Company Yugoimport SDPR (also known as Jugoimport-SDPR)

Civil Procedure – Foreign judgments – Enforcement – Registration – Whether Commonwealth judgment that was no longer fully enforceable in country of origin might be registered in Singapore – Whether just and convenient for court to enforce Commonwealth judgment in Singapore – Applicable principles – Whether delay in enforcing judgment justified – Sections 3(1), 3(3)(a), 3(3)(b) Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed)

Words and Phrases – "In so far only as relates to execution" – Section 3(3)(b) Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed)

Words and Phrases – "Just and convenient" – Section 3(1) Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed)

30 December 2008 Judgment reserved.

V K Rajah JA (delivering the judgment of the court):

Introduction

1 The present appeal has a long and convoluted history. Sometime prior to 1990, Westacre Investments Inc ("the Appellant") entered into a consultancy agreement with Yugoimport SDPR ("the Respondent"), a state-owned company in what is now the Republic of Serbia ("Serbia"), with respect to the sale of certain equipment in Kuwait. Pursuant to the agreement, Beogradska Banka DD ("Beogradska") guaranteed the payment of all fees due to the Appellant. The agreement was governed by Swiss law and expressly provided that all disputes were to be settled in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC"). The Respondent subsequently repudiated the agreement and, as a result, the Appellant commenced arbitration proceedings against the Respondent and Beogradska. An ICC arbitral tribunal made an award dated 28 February 1994 in the Appellant's favour ("the Award"). The Award determined that the Respondent and Beogradska were jointly and severally liable to pay the Appellant the sum of US$50,010,093.36 and £1,029,629.37 plus interest accruing at 5% per annum. After the Award was issued, the Respondent and Beogradska appealed to the Swiss Federal Tribunal to review the Award on public law grounds. The appeal failed.

2 In August 1995, the Appellant commenced proceedings in England under s 26 of the Arbitration Act 1950 (c 27) (UK) and s 3 of the Arbitration Act 1975 (c 3) (UK) for leave to enforce the Award. A common law action on the Award itself (as distinct from the proceedings for leave to

enforce the Award) was also commenced in April 1996 (both actions were eventually consolidated). In December 1997, the English High Court ruled in favour of the Appellant. Judgment was entered in favour of the Appellant against the Respondent and Beogradska in the sum of £41,584,488.86 on 13 March 1998 ("the English Judgment"). At the same time, execution of the English Judgment was stayed pending an appeal by the Respondent and Beogradska to the English Court of Appeal. On 12 May 1999, that appeal was dismissed. The Respondent and Beogradska then petitioned the House of Lords for leave to appeal. On 20 October 1999, the House of Lords refused to grant leave to appeal, and, on 10 November 1999, an order was made by the English Court of Appeal lifting the stay of execution. Over the next few years, the Appellant vigorously pursued a number of legal remedies in England in a bid to enforce the English Judgment there (see [41] below), but to no avail.

3 Sometime in late July 2004, the Appellant ascertained that there was a bank account in Singapore which contained funds of about US$14.8m allegedly belonging to the Respondent. The ownership of these funds ("the Disputed Funds") is disputed by the Respondent. The Disputed Funds are held in the name of Deuteron (Asia) Pte Ltd ("Deuteron"), a company in which the Respondent appeared to hold 49% of the paid-up capital as at 2004. On 5 October 2004, the Appellant applied *ex parte* via Originating Summons No 1311 of 2004 to register the English Judgment in Singapore pursuant to the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) ("RECJA"). The application was allowed, and an order of court was made on the same day (*ie*, 5 October 2004) directing that the English Judgment be registered under the RECJA ("the 5 October 2004 court order"). On 2 June 2005, the Respondent applied to the High Court via Summons in Chambers No 2744 of 2005 to set aside the registration. The setting-aside application was heard by an assistant registrar ("the AR"), who dismissed it with costs. The Respondent then appealed against the AR's decision. The judge who heard the appeal ("the Judge") disagreed with the AR and determined that "it [was] not just or convenient that the [English] [J]udgment be registered" (see *Westacre Investments Inc v Yugoimport-SDPR* [2007] 1 SLR 501 ("the Judgment") at [72]) as the Appellant had not discharged the burden of justifying its delay in applying to register the English Judgment. Further, the Respondent would be prejudiced by the delayed registration of an allegedly unenforceable judgment. Accordingly, the Judge ordered that the registration of the English Judgment be set aside. Dissatisfied with the Judge's decision, the Appellant appealed to this court (via Civil Appeal No 141 of 2006 ("CA 141/2006")). At the same time, the Respondent appealed (via Civil Appeal No 145 of 2006 ("CA 145/2006")) against the Judge's determination on the limitation issue, which had been decided in favour of the Appellant (see [9]–[16] of the Judgment).

Preliminary issues

CA 145/2006

4 On 9 May 2007, we heard the Respondent's appeal on the limitation issue (*ie*, CA 145/2006). Two substantial points were raised by the Respondent in this regard. The first was that the English Judgment constituted in substance an implied contract and, since more than six years had passed since the date on which that judgment was delivered, an action founded on it was time-barred by s 6(1) of the Limitation Act (Cap 163, 1996 Rev Ed). In our view, this argument was entirely and fundamentally misconceived as it unhappily conflated a distinct statutory right conferred by Parliament (*ie*, the right to register a Commonwealth judgment in Singapore) with a common law action for a debt. In this regard, we found the following excerpt from *Re Cheah Theam Swee* [1996] 2 SLR 76 at 82–83, [14]–[19] germane in exposing the conceptual fallacy of the Respondent's contention:

> At English common law, [a judgment] for the payment of money of a foreign court only creates a debt between the parties. It cannot be enforced as a judgment; it only provides a cause of

action on which the debtor can be sued in England. It is the judgment obtained in the fresh suit in England, not the judgment originally obtained in the foreign court, which is enforceable as a judgment in England. For this purpose, judgments obtained in those parts of the United Kingdom outside England, ie Northern Ireland and Scotland, were regarded as foreign judgments.

To overcome the inconvenience of this rule, the Judgments Extension Act of 1868 [(c 54) (UK)] was enacted. It provided and provides for the registration in any part of the United Kingdom of judgments for any debt damages and costs obtained in any other part. It provides that upon the registration of the certificate of judgment, the certificate should be of the same force and effect and all proceedings shall and may be had and taken on such certificate as if the judgment certified was a judgment of the registering court. Section 4 then provides that the registering court shall have and exercise the same control and jurisdiction over the registered judgment as it has and exercises over any of its own judgment[s] 'but in so far only as relates to execution under this Act … .'

In 1911, as a result of deliberations at the Imperial Conference, a scheme for the mutual recognition and enforcement of judgments rendered by the superior courts of countries of the then British dominions was agreed upon. This resulted in the enactment in the United Kingdom of Part II of the Administration of Justice Act 1920 [(c 81) (UK)]. This was followed in the Straits Settlements by the enactment of the Reciprocal Enforcement of Commonwealth Judgments Ordinance in 1921 (No 34 of 1921) in similar terms. That Ordinance is now an Act bearing the same name.

…

It is the evident object and purpose of the [RECJA] to facilitate the enforcement of judgments obtained in the superior courts of the United Kingdom and other Commonwealth countries to which the [RECJA] is extended. Together with the United Kingdom, the [RECJA] applies to no less than 20 countries and territories in the Commonwealth. *The object of the [RECJA] was obviously to do away with the necessity of a judgment creditor having to sue a debtor again in Singapore when he seeks to enforce a money judgment [that] he has obtained in another Commonwealth country to which the [RECJA] has been extended.*

[emphasis added]

5 The other rather obvious difficulty which we had with the line of argument advanced by the Respondent was the stark fact that, under s 3(1) of the RECJA, an application to register a Commonwealth judgment in Singapore (referred to hereafter as a "RECJA application") could be made "at any time within 12 months after the date of the judgment, *or such longer period as [might] be allowed by the Court*" [emphasis added]. If Parliament had intended to impose a definitive time limit for making a RECJA application, it could have easily provided for this, as can be seen from s 4(1) of the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) ("REFJA"), which states that an application to register a judgment obtained in a "foreign country" (as defined in s 2(1) of the REFJA) must be made "within 6 years after the date of the judgment" (see s 4(1)(*a*) of the REFJA). We need say no more.

6 The second substantial point raised by the Respondent related to the applicability of the Limitation Act 1980 (c 58) (UK) ("the UK Limitation Act"). According to the Respondent, registration of the English Judgment under the RECJA involved the exercise of a substantive right and this was time-barred under s 24(1) of the UK Limitation Act, which provided that no action should be brought upon any judgment after the expiration of six years from the date on which the judgment became

enforceable. This submission was likewise without substance as, if it were correct, it would have meant that a Singapore court would have to apply English law in determining whether to allow an English judgment to be registered under the RECJA. In our view, this was clearly wrong. We agreed with the Judge that (see [14] of the Judgment):

> The defect in this argument is that it is confused over whether English law or Singapore law governs the registration. A court in Singapore in deciding whether to register an English judgment should not be applying s 24(1) of the [UK] Limitation Act ... The limitation statute to be applied is the Limitation Act [*ie*, Singapore's Limitation Act], which does not set a time limit on applications to *register* foreign judgments. [emphasis in original]

In the result, we dismissed the Respondent's appeal (*ie*, CA 145/2006) without any diffidence. We now turn to the preliminary issues which arose in the present appeal (*ie*, CA 141/2006).

The reference to the English High Court

7 In relation to CA 141/2006, the Respondent's robust starting position was that the English Judgment was "dead"[note: 1] and that a garnishee order (or, to use the terminology now employed in England, a "third-party debt order"), which was the specific method of enforcement contemplated by the Appellant, could be issued in England only with the leave or permission of the English courts. Accordingly, the Respondent submitted that the AR had erred in holding that no leave of the court was required to enforce the English Judgment in England. The Judge agreed with the Respondent's contention. Before we proceed any further, it would be apposite to set out the relevant portions of the AR's decision relating to this point:[note: 2]

> ... Mr Khoo [counsel for the Appellant] pointed out that the **English [J]udgment was not barred from all forms of enforcement in England**. In particular, no leave of [the] court was required and there was no time limit for the issue of third party debt orders (garnishee orders) for this particular judgment (see *Ezekiel v Orakpo* [[1997] 1 WLR 340]), and **this was the very method of enforcement contemplated by the [Appellant] in Singapore**. Mr Khoo has confirmed on record that no other method of enforcement is contemplated, and there is no evidence to suggest that the [Respondent has] assets in Singapore other than the US$14 million which is the subject of garnishee proceedings here.
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> Despite this, Mr Gabriel [counsel for the Respondent] would have me set aside or stay the present proceedings and ask the [Appellant] to go back to the English courts and request for [the] leave of [the] court to issue writs of execution, despite the fact that such writs of execution are not going to be issued (whether in England or Singapore), and the very mode of enforcement contemplated here does not require leave in England. To me, this line of reasoning was surely unjust *and* inconvenient, and I had no difficulty in rejecting it. As Mr Khoo put it bluntly, "what the [Respondent is] saying is that just because [the Appellant] cannot proceed by 2 out of 11 methods in England, [it] should not be allowed to proceed by *any method at all* in Singapore." This cannot be right.
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> [emphasis in bold and in italics in original]

8 As mentioned earlier (at [7] above), the Respondent contended that the AR had erred on the above point. In particular, it asserted in the written case which it filed for this appeal ("the Respondent's Case") that:[note: 3]

> 154 … Since ... the [English] [J]udgment is dead and can only, at best, be revived in England

for the purposes of execution with the leave of the English Courts, and **this leave has not been given by the English Courts**, it would not be possible for this Honourable Court of Appeal to allow registration and give the English Judgment the same effect as a judgment of the Singapore Courts. As such, registration of the English Judgment under [the] RECJA should and must be denied. ...

…

171 Notwithstanding the clear evidence on this issue, at the first instance the AR proceeded to take the mistaken view that in England there was no time limit for the issue of third party debt orders such as garnishee orders and no requirement to obtain the leave of [the] court. According to the AR, [the] leave of [the] court was only required for writs of execution. In a misapprehension of the evidence before her, she held that the English Judgment could be registered for the purposes of garnishee proceedings without [the] leave of the English Courts.

172 The learned AR's finding was with respect, wrong. A charging order or garnishee order (third party debt order) if applied [for] by the [Appellant] in England can only be issued with [the] leave **or permission** of the English Court. This was common ground between the parties and their experts on English law …

[emphasis in bold in original]

9 It was apparent to us that the Respondent's submission about the English Judgment being metaphorically dead was simply another way of saying that it was unenforceable in England without the leave of the court and was therefore unenforceable for the purposes of the RECJA. We agree entirely with this argument as a general statement of principle in so far as enforceability of a Commonwealth judgment in the jurisdiction in which it was obtained ("the originating jurisdiction") is a prerequisite for registering that judgment in Singapore. This is indirectly reflected in, *inter alia*, O 67 r 3(1)(*c*)(i) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed).

10 In view of the fact that the parties' experts disagreed diametrically on the enforceability of the English Judgment in England (*contra* the Respondent's submission at para 172 of the Respondent's Case (see the quote at [8] above)), we adjourned the hearing of CA 141/2006 and directed the Appellant to refer to an English court for determination the issue of whether the English Judgment remained enforceable in England by way of a third-party debt order (we shall refer to the proceedings in England on this issue as "the reference proceedings"). It was necessary that this threshold issue be determined before we could decide whether it would be just and convenient to enforce the English Judgment in Singapore.

11 The question which we directed the Appellant to pose to the English court was as follows (see *Westacre Investments Inc v The State-Owned Company Yugoimport SDPR* [2008] EWHC 801 (Comm) ("*Westacre Investments*") at [15]):

On the assumption that there was a third party within the jurisdiction of the English court who owed or held money to the credit of the [Respondent], whether an English court in the exercise of its discretion would have given leave [to the Appellant] to enforce the English Judgment dated 13 March 1998 if the [Appellant] had applied for a third party debt order on 5 October 2004.

12 The reference proceedings went before Tomlinson J in the English High Court, who delivered his decision (*ie*, *Westacre Investments*) on 21 April 2008. Tomlinson J observed that, while different procedural rules applied to the myriad forms of enforcement, a judgment of the English High Court was

nonetheless "conceptually ... enforceable without limit of time" (see *Westacre Investments* at [3]). For instance, the issuance of a writ of execution in England is governed by O 46 r 2 of the Rules of the Supreme Court 1965 (SI 1965 No 1776) (UK) ("RSC"), and the leave of the court must be obtained for the issuance of such a writ after a lapse of six or more years from the date of the judgment (see O 46 r 2(1)(a) of the RSC). Where the court's leave is required, the judgment creditor must justify the granting of leave by showing that the circumstances of its case take it out of the ordinary. Third-party debt orders, on the other hand, are subject to Pt 72 of the Civil Procedure Rules (UK) ("CPR"), which sets out an entirely different regime. In particular, no reference is made in Pt 72 of the CPR to the time which has elapsed since the date of the judgment sought to be enforced. Instead, once the court has made an interim third-party debt order, the onus is cast upon the judgment debtor to make good any objections which it may have to the interim order being made final. On the facts of *Westacre Investments*, Tomlinson J stated at [23]:

> In the upshot I do not consider that the court would have hesitated long, if at all, before granting an interim [third-party debt] order in the present case, on the assumption which I make that the [Appellant's] evidence would have described the third party debtor within the jurisdiction and the debt owed to the [Respondent]. It is to be noted that neither CPR 72.3 nor the Practice Direction referred to therein would have required the [Appellant] to explain when precisely it had learned of the existence of the third party debt or to justify any lapse of time between the judgment and the application to enforce. Had the [Respondent] raised as an objection to the making of a final [third-party debt] order the circumstance that there had elapsed since the [English] [J]udgment six years [and] seven months this would of itself have been a factor of very little weight. In the context of garnishee proceedings where no special onus is placed upon the judgment creditor after the elapse of six years from the judgment the court would in my view have been most unlikely to regard as of any great significance arguments directed to showing that the judgment creditor might, with the exercise of greater diligence, or had it prioritised its efforts differently, have been able to discover the existence of [the] debt sooner. In the present case, where it is in any event vigorously denied that the third party debt is in fact owed to the [Respondent], such arguments wear an air of particular unreality. In my judgment in the absence of some compelling evidence of prejudice to the [Respondent] accruing from the delay in enforcement, the court would regard the grant of garnishee relief as virtually axiomatic. This is after all a judgment for a very substantial sum arising out of an international commercial dispute. The parties are corporations, not natural persons. The circumstances as I have already described them and the nature of the [Respondent] combine to produce obvious impediments in the way of straightforward enforcement against easily found assets of the [Respondent]. The starting presumption would be that the court should assist the judgment creditor to recover the debt due to it. As Lord Brightman said in *Roberts Petroleum v. Bernard Kenny Ltd* [1983] 2 AC 192 at page 207E:
>
> > "... A judgment creditor is in general entitled to enforce a money judgment which he has lawfully obtained against a judgment debtor by all or any of the means of execution prescribed by the relevant rules of court."

Similarly, in *Credit Lyonnais v. SK Global Hong Kong Ltd* [2003] HKCA 250, the Court of Appeal of Hong Kong stated, at paragraph 4:

> "Where, as in the present case, a party (the judgment creditor) has obtained a judgment against another party (the judgment debtor), the starting (and often, finishing) point is that the judgment creditor should be able to take all legitimate measures to enforce that judgment. That is, after all, his right."

13 Applying the above principles, Tomlinson J answered the question referred to the English High Court in the affirmative, as follows (see *Westacre Investments* at [27]):

> [O]n the undisputed and uncontroversial facts here present the English court would in October 2004 unhesitatingly have permitted enforcement [of the English Judgment] by way of [a] third party debt order against the presumed debt situate within the jurisdiction.

The Respondent did not appeal against Tomlinson J's decision.

The affidavit of Caroline Anne Bassett

14 Prior to the second hearing of CA 141/2006 on 29 July 2008, the Appellant applied to adduce an affidavit sworn on 12 June 2008 by one Caroline Anne Bassett, its solicitor in the reference proceedings ("Bassett's affidavit"), as further evidence. The said affidavit set out developments subsequent to the first hearing of this appeal on 9 May 2007, and it also exhibited, apart from the judgment of Tomlinson J in *Westacre Investments* ([11] *supra*), the documentary evidence that had been placed before him.

15 The Respondent initially resisted the application as it took the view that Bassett's affidavit, which comprised a total of 393 pages, included references to new facts and/or allegations that had been placed before the English High Court but not the Singapore High Court, and that to allow the application would amount to permitting the Appellant to sidestep the rule in *Ladd v Marshall* [1954] 1 WLR 1489.

16 A compromise was, however, reached at the hearing before us on 29 July 2008, with the Appellant agreeing to confine the fresh evidence to only Tomlinson J's judgment in *Westacre Investments* and the accompanying notes of evidence of the reference proceedings. The Respondent did not object to the admission of the said material. Accordingly, we made an order admitting Tomlinson J's judgment in *Westacre Investments* as well as the said notes of evidence. We also directed that the remaining portions of Bassett's affidavit be expunged from the record, and that the costs of the application be costs in the cause.

The issue on appeal

17 On the face of it, the issue before this court is a fairly uncomplicated one. Now that it has been determined that the English Judgment is registrable under the RECJA (because it is still enforceable in England), the issue before us is whether there is any basis for this court to interfere with the Judge's exercise of his discretion to set aside the registration of that judgment. The relevant principles in this regard were succinctly set out by this court in *Lian Soon Construction Pte Ltd v Guan Qian Realty Pte Ltd* [1999] 2 SLR 233 at [34], as follows:

> It is trite law that an appeal against the exercise of a judge's discretion will not be entertained unless it be shown that he exercised his discretion under a mistake of law, in disregard of principle, under a misapprehension as to the facts, or that he took account of irrelevant matters, or [that] the decision reached was 'outside the generous ambit within which a reasonable disagreement is possible'.

18 It should also be pointed out that the starting presumption would be that the Judge had rightly exercised his discretion. As the Privy Council stated in *Thamboo Ratnam v Thamboo Cumarasamy and Cumarasamy Ariamany d/o Kumarasa* [1965] 1 WLR 8 at 11:

> The principles upon which a court will act in reviewing the discretion exercised by a lower court are well settled. There is a presumption that the judge has rightly exercised his discretion: see [*Charles Osenton and Company v Johnston* [1942] AC 130 at 148 *per* Lord Wright]. The court will not interfere unless it is clearly satisfied that the discretion has been exercised on a wrong principle and should have been exercised in a contrary way or that there has been a miscarriage of justice: see *Evans* v. *Bartlam* [[1937] AC 473].

19 With this in mind, we turn now to consider the principles which our courts ought to apply in the exercise of their discretion as to whether or not to allow a Commonwealth judgment to be registered in Singapore.

The law governing RECJA applications

The starting point

20 The starting point of our analysis would be s 3(1) of the RECJA, which states:

> Where a judgment has been obtained in a superior court of the United Kingdom of Great Britain and Northern Ireland [or a superior court of any other Commonwealth country to which the RECJA applies] the judgment creditor may apply to the High Court *at any time within 12 months after the date of the judgment, or such longer period as may be allowed by the Court*, to have the judgment registered in the Court, and on any such application the High Court may, *if in all the circumstances of the case it thinks it is just and convenient that the judgment should be enforced in Singapore*, and subject to this section, order the judgment to be registered accordingly. [emphasis added]

21 Under the framework of the RECJA, in determining whether to allow a RECJA application, the court must consider "all the circumstances of the case" (see s 3(1) of the RECJA) and should permit registration of a Commonwealth judgment only if "it is just and convenient that the judgment should be enforced in Singapore" (*ibid*). In the court below, the Judge quite correctly noted that the phrase "just and convenient" is not by any stretch a term of precision. The word "just" has undoubtedly a strong connotation that it must be fair and equitable to allow the Commonwealth judgment in question to be enforced in Singapore, while the word "convenient" reminds the court that the enforcement of the Commonwealth judgment must be not only fair in the given circumstances, but also appropriately tailored to meet the exigencies of the circumstances. As this court stated in *Yong Tet Miaw v MBf Finance Bhd* [1992] 2 SLR 761 (at 768, [31]), which was also referred to by the Judge:

> The words 'just and convenient' in s 3(1) of the [RECJA] and 'just and convenient' in O 67 r 9(3) [of the Rules of the Supreme Court 1970 (GN No S 274/1970)] cannot, in our view, give an untrammelled discretion to the courts. The effect of both sets of words is, in our view, the same and their effect as described by Fletcher Moulton LJ in *Edwards & Co v Picard* [[1909] 2 KB 903] at p 907 is, 'where it is practicable and the interests of justice require it'.

Factors to be considered where there is delay in applying for registration

22 We turn now to consider the relevant factors which the court should take into account in assessing whether it would be just and convenient to allow a Commonwealth judgment to be enforced in Singapore in the specific scenario where (as in the present case) a RECJA application is made more than 12 months after the date of the judgment (for convenience, we shall hereafter refer to such an application as a "late RECJA application"). Before us, counsel for the Appellant relied on the Privy Council's decision in *Dianne Margaret Quinn v Pres-T-Con Ltd* [1986] 1 WLR 1216 ("*Quinn*") in support

of the proposition that the *sole* factor which a court should consider in determining whether to allow a late RECJA application was whether the judgment creditor's delay in applying for registration had caused any prejudice to the judgment debtor. The facts of *Quinn* were as follows. In that case, the plaintiff obtained a judgment in England against the second defendant, a company registered in Trinidad and Tobago. An application to register the English judgment in Trinidad and Tobago was then made some 12 months and five days after the date of the judgment. (Under the civil procedural rules then in force in Trinidad and Tobago, an application to register a judgment obtained in the UK had to be made either within 12 months after the date of the judgment or within such longer period as the court might allow.) The High Court of Trinidad and Tobago allowed the registration of the English judgment. The second defendant then applied to have the registration set aside. At first instance, Warner J dismissed the second defendant's application, but his decision was subsequently reversed on appeal by the Court of Appeal of Trinidad and Tobago, which ordered the registration of the English judgment to be set aside. On further appeal to the Privy Council, it was held that the registration should not have been set aside because (*id* at 1222):

> There was no evidence to show that the expiry of the extra five days had caused, or could conceivably have caused, any prejudice of any kind to the second [defendant]. That being so, the only way in which Warner J. could properly have exercised his discretion [with regard to the second defendant's application to set aside the registration of the English judgment] was by allowing the plaintiff the extra five days. Any decision by him not to do so would, in the circumstances of the case, have been plainly wrong.

23 To our minds, it is quite evident that, in *Quinn*, the Privy Council confined its deliberations and its decision to only the issue of prejudice to the judgment debtor as the delay of five days was by and large *de minimis*. It was not possible for the judgment debtor in that case (*ie*, the second defendant) to prove that it had been prejudiced by such a short period of delay. The facts in the present case are quite different, and, therefore, the decision in *Quinn* is of no assistance to this court.

24 In our view, when faced with a late RECJA application involving a delay which is not insubstantial (as in the present case, where there was a lapse of approximately six years and seven months from the date of the English Judgment before the Appellant applied to have that judgment registered in Singapore), it is plainly incumbent on the court to consider *all the circumstances of the case* – as mandated by s 3(1) of the RECJA – in determining whether it would be just and convenient to enforce the Commonwealth judgment in Singapore. This includes – but is not limited to – considering whether the delay has caused prejudice to the judgment debtor. Other factors which the court should take into account are (*inter alia*):

(a) whether the judgment creditor can give a reasonable explanation for its delay in applying to register the Commonwealth judgment;

(b) whether the judgment creditor has been reasonably diligent in seeking to enforce the Commonwealth judgment; and

(c) whether the judgment debtor has been obstructive.

In short, the question which the court must determine is: Where do the interests of justice lie, having regard to the factual matrix of the case?

The reasons for the judgment creditor's delay in applying for registration

25 The starting, and often significant, consideration, as the Judge rightly pointed out, is the judgment creditor's reason(s) for its delay in making its RECJA application. It is axiomatic that the greater the delay, the more cogent and compelling the judgment creditor's explanation must be in order to persuade the court to exercise its discretion to allow registration. That said, the issue of delay should also never be viewed in isolation as it is inextricably linked to two other key considerations which we will consider shortly, namely, the judgment creditor's diligence or otherwise in seeking to enforce the Commonwealth judgment in question and prejudice to the judgment debtor.

26 We would emphasise from the outset that the courts should always be conscious of the fact that, when faced with an uncooperative judgment debtor whose assets might be furtively squirrelled away all over the globe, a judgment creditor would invariably have to assume the arduous and extended task of tracking down the judgment debtor's assets across different jurisdictions. In today's wired world, money can be readily and instantaneously moved across national boundaries anywhere and anytime. Tracing such surreptitious asset movements and stripping off the layers of concealment, the facade of shell companies as well as the masks of often impenetrable nominees can be a painstaking, if not an impossible, task. The courts should be slow to place additional obstacles in the path of the judgment creditor who acts diligently and reasonably in trying to enforce its judgment. Further, as aptly pointed out by Tomlinson J in *Westacre Investments* ([11] *supra*) at [25], "[i]t [is] not unnatural that [the judgment creditor] [is] obliged to prioritise its efforts [by] directing them to the avenues which [seem] most likely to bear fruit". Thus, depending on the circumstances of each case, even a substantial delay can be accounted for and absolved.

The judgment creditor's diligence or lack thereof in pursuing enforcement

27 It is crucial for the judgment creditor who makes a late RECJA application to demonstrate to the court that it has been reasonably diligent in seeking to enforce its judgment. By way of analogy, it is not unhelpful to refer in a very general way to the approach taken by the court in relation to extending the time prescribed by the Rules of Court or by any judgment, order or direction for doing an act in any proceedings. Under O 3 r 4(1) of the Rules of Court, the court may grant an extension of time on such terms as it thinks just. In *Lee Hsien Loong v Singapore Democratic Party* [2008] 1 SLR 757, this court remarked at [58], in the context of an application to extend the time for filing a notice of appeal, that "[a] key consideration … is, in fact, that of diligence".

28 However, there are obvious limits to the analogy between an application for an extension of time under O 3 r 4 of the Rules of Court on the one hand and a late RECJA application on the other. Unlike the exercise of the discretion apropos an extension of time under the Rules of Court (where the policy of finality is often the most important consideration), in the case of an apparent delay in applying to register a Commonwealth judgment under the RECJA, the pivotal consideration is the relative prejudice to the judgment creditor and the judgment debtor. As we pointed out earlier (see [21] above), the operative words in the RECJA are "if *in all the circumstances of the case [the court] thinks it is just and convenient* that the judgment should be enforced in Singapore" [emphasis added] (see s 3(1) of the RECJA). The conduct of the judgment creditor thus has to be measured and contrasted with the conduct of the judgment debtor. Whilst the diligence (or lack thereof) of the judgment creditor is relevant, the attempt of the judgment debtor to hide its assets is equally relevant and may even often be more than just a relevant consideration. The concealment of assets by the judgment debtor is bound to make it difficult for the judgment creditor to find the former's assets, no matter how diligent the judgment creditor might be. In cases where there has been a concealment of assets, the tilting of the judicial scales will in the final analysis depend on the assessment of both parties' conduct in terms of who was more responsible for the delay in applying to register the Commonwealth judgment as well as who would be more prejudiced if registration were allowed or disallowed.

29 It is also important to bear in mind that the diligence of the judgment creditor should ordinarily be examined at two distinct levels: first, its efforts in enforcing the Commonwealth judgment in the primary jurisdiction where the judgment debtor's assets might be located; and, second (and more particularly), its endeavours to uncover those of the judgment debtor's assets which are or might be located in Singapore. If a judgment creditor is able to demonstrate reasonable diligence on both levels, a court would almost invariably be more inclined to allow rather than dismiss a late RECJA application. It would also be right to say that, typically, where the judgment creditor has been reasonably diligent in seeking to enforce a Commonwealth judgment, it would be difficult for the judgment debtor to establish prejudice arising from the judgment creditor's delay in applying to register that judgment under the RECJA *per se*, especially if the judgment debtor has been trying to hide its assets from the judgment creditor.

30 That said, there may well be situations where a judgment creditor has been reasonably diligent in pursuing enforcement elsewhere or on the whole, but rather tardy in pursuing leads that eventually point to the assets sited in Singapore. The reality is that, as mentioned earlier (at [26] above), a judgment creditor often has to prioritise its time and efforts by pursuing avenues that it thinks would yield an optimal outcome. As such, it may well be perfectly reasonable for the judgment creditor not to act with visible conscientiousness on all possible fronts and *vis-à-vis* all potential leads, even if some of them might eventually prove, with hindsight, to have been the proper avenues to pursue from the outset. In such situations, the burden rests on the judgment creditor to explain its delay in pursuing enforcement. A failure to satisfactorily do so may *prima facie* militate against allowing registration of the Commonwealth judgment concerned, but, so long as reasonable diligence in pursuing enforcement on the whole can be shown, that should diminish the legal impact of any apparent dilatoriness by the judgment creditor. We cannot in this regard overemphasise the point that the court should usually be slow to find fault with a judgment creditor by applying "infallible" conclusions reached with the benefit of hindsight. In the final analysis, the judgment creditor's lack of diligence in pursuing enforcement should not usually in itself be a reason for the court to dismiss a late RECJA application unless the prejudice to the judgment debtor if registration is allowed is greater than the prejudice to the judgment creditor if registration is refused. We now turn to consider the issue of prejudice.

Prejudice to the judgment debtor

31 The assessment of prejudice to the judgment debtor requires a holistic approach which takes into account the competing considerations. While a judgment debtor may challenge a late RECJA application on the ground of prejudice, it is manifest that a refusal to allow registration would likewise invariably constitute real and (possibly) irremediable prejudice to the judgment creditor.

32 In assessing whether the judgment creditor's delay in applying to register a Commonwealth judgment constitutes sufficient prejudice to the judgment debtor so as to make it unjust and inconvenient to enforce the relevant judgment in Singapore, the following two English cases, although concerning applications for the court's leave to issue writs of execution, provide in our view a helpful reference point.

33 In *Duer v Frazer* [2001] 1 WLR 919, a case concerning an application for leave to issue a writ of execution in England *vis-à-vis* a judgment obtained in Germany, the claimant obtained the German judgment against the defendant sometime in March 1984. Four months later (*ie*, in July 1984), the claimant registered the said judgment in England. In March 1988, the claimant employed inquiry agents to trace the defendant and identify his assets. By the end of 1988, the claimant had information that the defendant was living in Nevis (an island in the Caribbean), where he owned a plot of land. The claimant took no further steps to enforce the German judgment until 1994, when she

employed new inquiry agents to assist her, and it was only in 1997 that the defendant became seised of the fact that the claimant remained intent on enforcing the German judgment. In 2000, the claimant applied under O 46 r 2 of the RSC for leave to issue execution in England on the German judgment. (It appeared that the claimant made this application as an English court order giving her leave to execute the German judgment in England would greatly assist her in procuring similar execution in Nevis (see *Duer v Frazer* at [15]).) Master Hodgson initially made a without notice order giving the claimant leave to issue execution ("the Earlier Order"), but, upon the defendant's application, he subsequently discharged the Earlier Order (for convenience, we shall refer to Master Hodgson's order discharging the Earlier Order as "the Discharge Order"). The claimant's appeal against the Discharge Order went before Evans‑Lombe J. On the question of whether the defendant had been prejudiced by the claimant's delay in issuing execution of the German judgment in England, Evans‑Lombe J observed (*id* at [25]) that:

> Each case must turn on its own facts but, in the absence of very special circumstances such as were present in *National Westminster Bank plc v Powney* [1991] Ch 339, the court will have regard to such matters as the explanation given by the judgment creditor for not issuing execution during the initial six-year period [prescribed by O 46 r 2(1)(a) of the RSC], or for any delay thereafter in applying to extend that period, and any prejudice which the judgment debtor may have been subject to as a result of such delay including, in particular, any change of position by him as a result which has occurred. The longer the period that has been allowed to lapse since the judgment the more likely it is that the court will find prejudice to the judgment debtor.

34 Evans‑Lombe J then continued (see *Duer v Frazer* at [30]–[31]):

> 30 A period of approximately eight years went by between August 1989 and April 1997 when no contact was made between the claimant and the defendant to indicate that the claimant was still pursuing her judgment. Thereafter, when [the defendant] had been again traced to Nevis by the claimant various steps were taken culminating in this application. In the note of Master Hodgson's judgment the following passage appears describing this period:
>
> > 'Meanwhile the defendant, for whom one must not have too much sympathy, destroyed his papers 12 years on and now finds himself, 14 or 15 years on, having to deal with this. He is now 73 and not in the best of health according to the affidavit of a friend. He has had a heart attack.'
>
> 31 The heart attack occurred in 1992. 16 years have now gone by since the German judgment was made and [15.5] years since it was registered in England. If execution requires the defendant to leave his house or surrender his possessions it will be much more onerous for him now than it would have been six years after registration.

On these facts, Evans‑Lombe J affirmed the Discharge Order. Clearly, the claimant's delay had caused the defendant to change his position such that, if he had to leave his house and surrender his possessions, the resultant prejudice to him would be greater than the prejudice which the claimant would suffer if she were to forfeit her judgment debt.

35 Applying precisely the same considerations as those laid down in *Duer v Frazer*, a different outcome was reached by the English High Court in *Society of Lloyd's v Longtin* [2005] 2 CLC 774 ("*Lloyd's*"). In *Lloyd's*, the claimant ("Lloyd's") entered judgment against the defendant in England on 11 March 1998. Lloyd's then sought to have the judgment recognised and enforced in Quebec, where the defendant was resident, and commenced enforcement proceedings there in March 2004. The

defendant challenged the enforcement proceedings in Quebec ("the Quebec proceedings") on, *inter alia*, the ground that the English judgment was no longer enforceable in England as more than six years had elapsed since it was granted (*id* at [7]).

36 The Quebec proceedings were scheduled to be heard in late September 2005. On 23 August 2005, Lloyd's made an application to the English courts for leave to issue a writ of execution on the English judgment so as to demonstrate, for the purposes of the Quebec proceedings, that the English judgment remained enforceable (see *Lloyd's* at [10]). Morison J held that the legal test in determining whether to grant leave was whether there were facts which took the case out of the general rule that execution would not be allowed after six years from the date of the judgment concerned. He emphasised that, in applying this test, the exercise of his discretion "must be directed to doing justice between the parties, having regard to all the circumstances of the case" (*id* at [22]). He then stated (*id* at [23]):

> It seems to me that in this case there are facts which take this case out of the ordinary. From the very outset, [the defendant] must have known that Lloyd's remained intent on enforcing [its] rights against him. There can be no prejudice to him. Lloyd's [has] remained active in seeking to have recognised and enforced the many judgments which [it has] obtained [the English judgment which Lloyd's had obtained against the defendant being one of these judgments]. In the course of this massive task [Lloyd's] must be allowed time to consider [its] position and to adopt stances which reasonably appear to [it] to be the best way of proceeding. ... [Lloyd's] started the Quebec [proceedings] reasonably promptly. The chief period of delay upon which Ms Robertson [counsel for the defendant] relies is from the beginning of January 2005 until September [2005]. I can see the force of her point that for a period of 9 months Lloyd's did less than might have been expected of [it]. On the other hand, the decision to make the application [to the English courts for leave to issue a writ of execution], which is of indirect benefit only, will have required analysis and decision time. Looked at overall, a period of inexcusable delay of some 6 months at most does not disentitle Lloyd's to the relief [it] seek[s]. ... As far as I can tell from the papers before me, Lloyd's [has] behaved appropriately, firmly and promptly in seeking to enforce [its] judgment against [the defendant].

37 While *Duer v Frazer* and *Lloyd's* were concerned with applications for leave to issue execution, the same considerations are, in our view, applicable to a late RECJA application. Accordingly, if the judgment debtor is able to show that that it has changed its position as a result of or has been misled by the judgment creditor's inaction over a long period of time such that the harm or prejudice to the judgment debtor if registration of the Commonwealth judgment were allowed would outweigh the harm or prejudice to the judgment creditor if registration were disallowed, the court would be inclined to reject the late RECJA application in question. Each case necessarily turns on its own facts.

Application of the relevant legal principles to the facts of the present case

38 With the aforementioned principles (see [20]–[37] above) in mind, we now consider the relative merits of, respectively, the Appellant's case for and the Respondent's case against registration of the English Judgment under the RECJA in terms of whether it would be just and convenient to enforce that judgment in Singapore.

The merits of the Appellant's case for registration

39 In essence, the case for the Appellant *vis-à-vis* registration of the English Judgment in Singapore is that:

(a) its delay in applying for registration was due to a number of factors which were not within its control;

(b) it has exercised reasonable diligence in seeking out the assets of the Respondent for the purposes of enforcing the English Judgment; and

(c) when assessed in the light of the Respondent's conduct, which had prevented the Appellant from uncovering the Respondent's assets earlier, justice and convenience are on the Appellant's side.

The Appellant's delay in applying for registration

40 With regard to the Appellant's delay in applying to register the English Judgment in Singapore, the Appellant's case is that it is common knowledge that Serbia was in a state of political turmoil and instability between 1997 and 2002. In this regard, Mr Malcom Brooks Savage Jr, the American legal counsel for the Appellant, stated that:[note: 4]

> ... I consider it impractical, to say the least, to expect [the Appellant] to have made continuing inquiries of the Yugoslav authorities or searches of Yugoslav governmental records given the political situation in the country and [the Respondent's] central role in the country's military procurement and national defence.

In these circumstances, it is fair that this court takes into account the political turmoil in Serbia for the purposes of determining whether the Appellant was dilatory in enforcing its rights. On this basis, the effective period of the delay attributable to the Appellant's conduct would be slightly less than three years (*ie*, from the beginning of 2002 to 5 October 2004, when the application to register the English Judgment in Singapore was made).

The Appellant's diligence in pursuing enforcement

41 To demonstrate the Appellant's diligence in pursuing enforcement of the English Judgment, the Appellant set out in its written case for this appeal the following steps which it took to enforce the English Judgment as well as the Award (which is the basis of that judgment):[note: 5]

> **Enforcement of the Award**
>
> 1. After obtaining the Award in 1994, the [Appellant] commenced legal proceedings to enforce the Award in Cyprus, Kuwait and Switzerland. ... The Cypriot proceedings against Beogradska are on-going.
>
> **Enforcement of the English Judgment from 1999 to 2004**
>
> 2. After the lifting of the stay of execution on **[10] November 1999**, the [Appellant] commenced garnishee proceedings on **10 December 1999** in the English High Court ... to enforce the English Judgment by garnishing the [Respondent's] account with AY Bank Limited, London.
>
> 3. On **27 March 2000**, pursuant to the garnishee proceedings commenced on 10 December 1999, the [Appellant] obtained an Order that all debts due or accruing due from AY Bank Limited to the [Respondent] be attached to answer the English Judgment.
>
> 4. On **25 May 2000**, the [Appellant] obtained a Charging Order from the English High Court

ordering that Beogradska's shares in AY Bank Limited, London be charged to answer the English Judgment.

5. On **1 May 2001**, the [Appellant] obtained an Order from the English High Court, directing Beogradska to irrevocably instruct AY Bank Limited that notices or other communications given or made by AY Bank Limited to or with Beogradska as holder of shares in AY Bank Limited be sent or communicated to the [Appellant's] solicitors.

6. On **25 May 2001**, the [Appellant] obtained from the English High Court ... an Order for the Appointment of Joint Receivers to (inter alia) control and exercise in the name of the [Respondent], any such rights as the [Respondent might] possess by virtue of the [the Respondent's] London account with AY Bank Limited.

7. On **28 June 2001**, the [Appellant] obtained a Garnishee Order Absolute from the English High Court ordering that the debt due from Metalchem International Limited ("Metalchem") to Beogradska be paid by Metalchem to the [Appellant] in satisfaction of the English Judgment.

8. On **30 November 2001**, the [Appellant] obtained a Charging Order from the English High Court, ordering that shares in AY Bank Limited in the name of Metalchem and pledged to Beogradska, be charged to answer the English Judgment.

9. In **January 2002**, the Yugoslav central bank decided to place Beogradska into liquidation. In **March 2002**, the [Appellant] filed its "Notice of Claim" against Beogradska, pursuant to the Beogradska liquidation. Since then, the [Appellant has] not received any communication recognising the English Judgment, nor any payment or dividend, from the Serbian authorities in charge of the liquidation.

10. On **31 July 2003**, the [Appellant] obtained from the English High Court, an Order Varying the Order for the Appointment of Joint Receivers dated 25 May 2001.

11. On **26 September 2003**, AY Bank Limited, London went into liquidation. Thereafter, the [Appellant] took an active role with the liquidators of [AY] Bank Limited. The [Appellant] received two dividends from the liquidators in **2004** – a dividend of £1,019,324.50 received in January 2004, and a dividend of £611,594.70 received in August 2004. On **18 January 2007**, the [Appellant] received a further dividend of £265,024.37.

[emphasis in bold in original]

42 This catalogue of activities plainly shows that the Appellant has been continuously engaged in enforcement-related proceedings in England against the Respondent and Beogradska from 1999 to 2004. Unfortunately, the Judge appeared to have paid scant attention to the Appellant's efforts in this regard. It should also be pointed out that, soon after the Appellant became aware in late July 2004 that the Respondent might have assets in Singapore (in the form of the Disputed Funds, which are held by Deuteron), it made an *ex parte* application in early October 2004 to register the English Judgment under the RECJA (see [3] above). This again shows the Appellant's diligence in pursuing its rights.

43 At this point, we should consider one argument made by the Respondent, which was that the Appellant could have discovered the Respondent's alleged assets in Singapore ("the Respondent's alleged Singapore assets") in March 2002 if the Appellant had made a search (which it failed to do) of a special register kept by the Serbian Ministry of Foreign Trade ("the Serbian Register"). According to

the Respondent:[note: 6]

> 7. The effect of such a search, if carried out, would have clearly shown the existence of assets in Singapore. This is because all records pertaining to the [Respondent], including the [Respondent's] asset holdings are filed with the relevant registry in Serbia & Montenegro and would be available to the public upon payment of a fee.
>
> 8. The failure of the [Appellant] in [terms of] not taking such an obvious step makes [it] unconscionable for the [Appellant] to now say that it is just and equitable for the order herein [*ie*, the 5 October 2004 court order] to have been granted.

44 The Appellant, on the other hand, contended that its failure to search the Serbian Register was irrelevant as it had obtained independent legal advice from a Serbian lawyer in 1998 on the Respondent's assertions of its poor financial condition. The lawyer engaged by the Appellant had in fact agreed with the Respondent's assertions and had advised as follows:[note: 7]

> I believe in full that Ms. Vivienne Edeltraud Pitroff [the Respondent's English counsel], on [the] basis of documents available to her, gave a correct report regarding the financial state of Your client's debtor.
>
> ... You must know that the fulfilment of [the] obligations of debtor [*sic*] from Yugoslavia to Your client, with [the] help of [the] Yugoslav court in that process, will be very difficult for [the] following reasons:
>
> 1) [The Respondent] is [a] company owned by [the] Yugoslav government [which], at this moment, is in possession of foreign currency reserves of about US$200,000,000 in total. [The] [d]ebt to Your client ... is around US$90,000,000 alone, so it is not real [*sic*] to expect that the government will release nearly half of its foreign currency reserves for the payment of this debt. ...

45 That aside, the relevant issue is whether, if the Appellant had made a search of the Serbian Register, it would really have discovered the Respondent's alleged Singapore assets. In this connection, the Respondent's Serbian legal expert, Mr Oliver Zivkovic, stated that:[note: 8]

> [The] [r]egister kept by the Ministry of International Economic Relations of the Republic of Serbia [*ie*, the Serbian Register], whereby companies and other legal persons doing commercial business abroad are recorded, is a public registry and every natural or legal person may obtain requested excerpt[s]. A search at the Registry would show the [Respondent's] ownership of shares in Deuteron ...
>
> [The] [p]rovisions of the Law of national defense in no way limit access [by] interested persons to the data from the subject register, or prohibit entry in the register of data ... that have to be recorded as per [the] provisions of the Foreign Trade Act.

46 We note, however, that, in contrast to the assertions set out in the preceding paragraph, the Respondent had informed Tomlinson J in the reference proceedings that only a party with a "sufficient legal interest" (see *Westacre Investments* ([11] *supra*) at [13]) would be permitted to inspect the Serbian Register and that, although the Respondent itself did not have the requisite legal interest to search the Serbian Register, the Appellant, being a judgment creditor, would have been regarded by the relevant Serbian authorities as possessing a sufficient legal interest to be permitted to inspect that register (*ibid*). This information confirms the evidence of the Appellant's legal expert,

Mr Radomir Milošević, that the authorities in charge of the Serbian Register have a discretionary power to refuse a request to inspect that register on the basis that the requesting party has not shown that it has a sufficient legal interest in the information sought or on the basis that such information is classified.[note: 9] Furthermore, it should be noted that all that the Respondent was able to produce in these proceedings for the purposes of demonstrating the usefulness of the information in the Serbian Register was a verified copy of the information which it had submitted for registration in that register; this verified copy, however, does not necessarily show what information was actually registered in the Serbian Register.

47 In the circumstances, we place no weight on the Respondent's argument that the Appellant could have discovered the Respondent's alleged Singapore assets by searching the Serbian Register and prefer the Appellant's arguments on this issue. In our view, the evidence before us shows that the Appellant was persistent and diligent in its attempts to seek recovery of the judgment debt payable by the Respondent.

The merits of the Respondent's case against registration

Prejudice to the Respondent

48 The Respondent asserts that it would be prejudiced if the registration of the English Judgment under the RECJA is permitted to stand. Its argument is as follows: The English Judgment is no longer enforceable in England by way of a writ of execution unless the leave of the court is obtained. In contrast, if the registration of that judgment under the RECJA is upheld, then, by virtue of s 3(3)(*a*) of the RECJA, that judgment can be enforced in Singapore by any of the enforcement methods allowed under Singapore law, regardless of whether or not the court's leave is required if that method is adopted in enforcement proceedings in England. It is argued that this would in effect give the Appellant an advantage which it does not have or deserve in England, and would be highly prejudicial to the Respondent.

49 The above argument was initially made before the AR, who rejected it on the ground that, under s 3(3)(*b*) of the RECJA, "the registering court [had] the same control and jurisdiction over the [registered Commonwealth] judgment as it [had] over similar judgments given by itself ... in so far ... as relates to execution under [s 3]".[note: 10] The AR considered that this provision "certainly gave the court the power to direct that any [Commonwealth] judgment that was registered should only be enforced by a certain method".[note: 11] She added that, even if s 3(3)(*b*) of the RECJA did not empower the court to impose such a restriction, either O 92 r 4 or O 92 r 5 of the Rules of Court would provide the court with the requisite authority. In view of the Appellant's stance that it was seeking to enforce the English Judgment in Singapore by garnishee proceedings specifically and no other method (see [7] above), the AR dismissed the Respondent's application to set aside the registration of that judgment and, at the same time, varied the 5 October 2004 court order by directing that the registration of the English Judgment was to be "**for execution by way of garnishee proceedings only**"[note: 12] [emphasis in bold in original; underlining in original omitted].

50 The Judge, whilst agreeing with the AR that prejudice would be caused to the Respondent if the English Judgment were registered under the RECJA without any restrictions, disagreed that the court had the power to impose restrictions on the method of enforcing a Commonwealth judgment which had been registered under the RECJA ("a registered Commonwealth judgment"). At [69]–[71] of the Judgment, he stated:

> 69 Section 3(3)(*b*) of the RECJA does not give the court power to impose the restriction [which the AR imposed, *viz*, that the English Judgment be registered for execution by way of

garnishee proceedings only]. If a judgment deserves to be registered, it should be registered with full effect. Conversely, if the judgment does not deserve to be registered because registration would result in prejudice to the judgment debtor, it should not be registered in a restricted form.

70 Order 92 r 4 and r 5 [of the Rules of Court] cannot be invoked to impose such a restriction. The restriction cannot be justified as being necessary to prevent injustice or to prevent an abuse of the process of the court, and it is not a necessary incidental or consequential order to give effect to a registration which, when approved, is intended to be effective without restriction.

71 Without the restriction, the prejudice to the [Respondent] is clear, and that is that the [Appellant] can issue writs of execution against [the Respondent] in Singapore without the leave of [the] court, [even] though [the] leave of [the] court is necessary in England.

51 In our view, the issue of whether the court has the power to impose restrictions on the manner of enforcing a registered Commonwealth judgment is irrelevant to the question of whether a RECJA application should be allowed or dismissed. As we have mentioned earlier (at [9] above), before a Commonwealth judgment can be registered under the RECJA, it must be enforceable in the originating jurisdiction (*ie*, the jurisdiction in which the judgment was obtained). Here, the English Judgment is strictly speaking not immediately enforceable in England by way of a writ of execution because of the lapse of time. However, in England, different procedural rules apply to different methods of enforcement. Indeed, in *Westacre Investments* ([11] *supra*), Tomlinson J emphatically pointed out (at [3]) that, conceptually, an English judgment, "although interest bearing for only six years, remain[ed] enforceable without limit of time". Tomlinson J then decided (*id* at [23]) that, if an application had been made to enforce the English Judgment in England by way of a third-party debt order, the court would almost unhesitatingly have made an interim third-party debt order.

52 Since the English Judgment is enforceable in some manner in England (and the Respondent no longer disputes this), it follows that this judgment fulfils the threshold requirement of registrability under the RECJA (as set out at [9] above). The only issue that remains to be decided is whether it is just and convenient to enforce the English Judgment in Singapore in the circumstances of this case. It is at this point (*viz*, in the context of enforcement *in Singapore* specifically) that the issue of the relative prejudice to the Appellant and the Respondent respectively arises. There is no issue of prejudice in relation to the threshold issue of enforceability of the English Judgment in England (the originating jurisdiction in this case) – that is simply a legal requirement which must be satisfied before the English Judgment can be registered under the RECJA. Similarly, although prejudice to the Respondent would inevitably follow if the registration of the English Judgment under the RECJA were permitted to stand, such prejudice – *ie*, prejudice arising from registration – is irrelevant as, otherwise, no Commonwealth judgment can be registered in Singapore at all. The crucial consideration in assessing a RECJA application is whether it would be just and convenient to enforce the judgment concerned in Singapore, having regard to the rights of the parties as well as other relevant factors such as the parties' conduct (*eg*, the diligence and persistence of the judgment creditor in pursuing its rights, the judgment debtor's knowledge of the judgment creditor's intention *vis-à-vis* enforcement of the judgment and the steps taken by the judgment debtor to obstruct discovery of its assets).

The Respondent's attempts to obstruct enforcement

53 With regard to the last of the factors mentioned in the preceding paragraph (*ie*, the attempts by the judgment debtor to obstruct discovery of its assets), in the present case, the Respondent not only did not seek out the Appellant to pay the amount awarded under the English Judgment, but also deliberately gave a selective and incomplete picture to the English court about its assets for the

purposes of stay proceedings in the UK ("the UK stay proceedings"). It was only by a stroke of luck that the Appellant came to know of the Respondent's alleged Singapore assets.

54 Before the Judge, the Respondent argued that it had co-operated fully with the Appellant by voluntarily disclosing its financial statements in an affidavit sworn by Ms Vivienne Edeltraud Pitroff, its English counsel, on 2 February 1998 for the purposes of the UK stay proceedings ("Ms Pitroff's affidavit").[note: 13] In our view, while it is true that there was voluntary disclosure by the Respondent of its financial statements via Ms Pitroff's affidavit, crucially, those statements failed to disclose the Respondent's interest in Deuteron in Singapore. While we are conscious of the fact that ownership of the Disputed Funds has yet to be resolved, we are of the view that it would not be unreasonable to assume that discovery of the Respondent's ownership of shares in Deuteron would have led to discovery of the Disputed Funds. Indeed, the Respondent essentially conceded this point in its written submissions to the Judge in the court below:[note: 14]

> With respect, it was ... wrong for the ... AR to state that even if the search [of the Serbian Register had] revealed [the Respondent's] shares in Deuteron, it would be *"a leap of logic to suggest that this would somehow have enabled the [Appellant] to discover that Deuteron held some US$14million on the [Respondent's] behalf."* As stated, any prudent judgment creditor after discovering a judgment debtor's shareholding in a foreign company would carry out the next logical step – [*ie*, carry out] a search in that country. ***A search in Singapore would have revealed the [the Respondent's] shareholding in Deuteron and the ensuing proceedings in Singapore would have brought the issue concerning the subject moneys [ie, the Disputed Funds] to the fore.*** [emphasis added in bold italics]

This bears out our point that, as mentioned earlier (see [53] above), the Respondent's voluntary disclosure was a selective and incomplete one. Furthermore, Ms Pitroff's affidavit also alleged that the assets in the financial statements disclosed by the Respondent had no value as they were not realisable. The disclosure, therefore, added no value to the Respondent's case in terms of showing how and/or why the Respondent would be prejudiced by enforcement of the English Judgment in Singapore.

Conclusion

55 On the evidence before us and for the reasons given above, we are of the view that, in all the circumstances of the case, it is just and convenient that the English Judgment be enforced in Singapore. We are unable to see any merit whatsoever in the Respondent's application to set aside the registration of the English Judgment. Accordingly, we allow this appeal with costs here and below as well as the usual consequential orders, and set aside the order made by the Judge.

[note: 1]See para 154 of the Respondent's Case filed on 11 April 2007 ("the Respondent's Case").

[note: 2]See pp 23–24 of the certified transcript of the AR's minute sheet for the hearing on 16 February 2006 ("the AR's minute sheet") (at vol 2, pp 169–170 of the Appellant's Core Bundle filed on 12 March 2007 ("ACB")).

[note: 3]See the Respondent's Case at p 78 and pp 86–87.

[note: 4]See para 8 of the affidavit of Mr Malcolm Brooks Savage Jr ("Mr Savage") filed on 7 November 2005 (at ACB vol 2, p 255).

[note: 5]See Appendix A of the Appellant's Case filed on 12 March 2007.

[note: 6]See the affidavit of Mr Miodrag Milosavljević filed on 5 September 2005 (at ACB vol 2, pp 249–252).

[note: 7]See Exhibit "MBS-(c)" of Mr Savage's affidavit filed on 7 November 2005 (at ACB vol 2, pp 264–265).

[note: 8]See the affidavit of Mr Oliver Zivkovic filed on 9 December 2005 (at pp 18–21 of the Appellant's Supplemental Core Bundle dated 14 July 2008).

[note: 9]See Exhibit "RM-2" of the affidavit of Mr Radomir Milošević filed on 11 November 2005 (at ACB vol 2, pp 302–307).

[note: 10]See p 25 of the AR's minute sheet (at ACB vol 2, p 171).

[note: 11]*Ibid*.

[note: 12]See p 26 of the AR's minute sheet (at ACB vol 2, p 172).

[note: 13]See ACB vol 2 at pp 51–69.

[note: 14]See the Respondent's Supplementary Core Bundle filed on 11 April 2007 at p 144.

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