

**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

SAINT LUCIA

COMMERCIAL DIVISION

CLAIM NO. SLUHCM2020 /0059

BETWEEN:

RBTT BANK CARIBBEAN LTD.

Judgment Creditor/
Respondent

And

1. **HENRY LIU**
2. **FENG HUANG**
3. **SUNFLOWER LIMITED**

Judgment Debtors/
Applicants

Before:

The Hon. Mde. Justice Cadie St Rose-Albertini

High Court Judge

Appearances:

Mrs Shervon Pierre for the Judgment Creditor
Mr. Eghan Modeste for the Judgment Debtors

2022: February 9
March 2

DECISION IN CHAMBERS

- [1] **ST ROSE-ALBERTINI, J. [Ag]:** This is an application to set aside a registration order of this Court dated 4th August 2020 (“the Order”). The applicants are Henry Liu, Feng Huang and Sunflower Limited (“the judgment debtors”). The respondent is RBTT Bank Caribbean Limited (“the judgment creditor”).

- [2] By way of background, on 30th July 2020 the judgment creditor filed a without notice application ('the Registration Application'), seeking (i) the leave of the court to register in Saint Lucia a money judgment obtained in the High Court of Saint Vincent and the Grenadines on 23rd January 2020 ('the judgment'); and (ii) an order for entry of an inhibition against the property of the first and second judgment debtors registered in the Land Registry of Saint Lucia as Block 1258B Parcel 144 ('the Property') pending determination of the Registration Application.
- [3] On granting the Registration Application, it was ordered that the judgment be registered in Saint Lucia, with liberty to the judgment debtors to file an application to set aside the Order within 14 days of service. It was further ordered that no proceedings in relation to execution of the judgment should be issued until the expiration of 14 days from the date of service of the Order. Additionally, any dealings with the Property were inhibited, pending final determination of the Registration Application.
- [4] Pursuant to paragraph 5 of the Order and Part 72 of the Civil Procedure Rules 2000 ('the CPR'), the judgment debtors have filed this application to set aside the Order.

The Issues

- [5] Two issues have arisen for determination, namely:-
1. Which is the law and procedure that governs the two applications?
 2. Whether the Order ought to be set aside?

Grounds and Evidence in Support of the Application

- [6] The grounds of this application are that:
1. The affidavit in support of the Registration Application breached several requirements of CPR 72.2 and as such the Registration Application was fatally flawed, and the Order is irregular and should be set aside as of right. The breaches were in regard to:

- (i) CPR 72.2(b) for which the affidavit failed to specify the amount of the interest, if any, which had become due under the Judgment up to the time of the Registration Application.
 - (ii) CPR 72.2(c) for which the affidavit failed to identify or state the trade or business of any of the parties to the matter.
- 2. The failure to comply with CPR 72.2(b) and 72.2(c), warranted that the Registration Application be struck out pursuant to CPR26.3(1)(a).
- 3. In keeping with sections 4(1)(b), 6(1)(a)(i) and 6(1)(a)(v) of the Enforcement of Foreign Judgments Act¹ ("the EFJ Act"), the judgment creditor failed to show that the Judgment could be enforced by execution in the country of the original court, and it ought not to have been registered.
- 4. The judgment creditor failed to show how the country of the original court had jurisdiction in accordance with sections 6(2) and 6(3) of the EFJ Act.
- 5. Registration of the Judgment is of tremendous prejudice to the judgment debtors, as the judgment creditor is seeking to register a judgment in excess of \$3,000,000.00, which has led to the registration of an inhibition which has restricted their ability to deal with and dispose of the Property.
- 6. The judgment creditor did not provide a full and frank account of the circumstances surrounding the Judgment and concealed the fact that security was already held in Saint Vincent. The judgment creditor also failed to advance any reason why the security could not be liquidated there, to settle the debt.
- 7. In the alternative, it is not just or convenient that the Judgment be enforced in Saint Lucia, as stipulated in CPR 72.7(2) (a).

[7] The affidavit in support is deposed by Henry Liu and Feng Huang, and sets out details of the securities already held by the judgment creditor, which they say were concealed from the Court in the Registration Application. This includes (i) a registered first legal mortgage over commercial property comprising 11,352 square feet of land at Kingstown, St. Vincent, registered in the name of the judgment debtors to secure credit facilities granted to

¹ Cap 2.09 of the Laws of Saint Lucia.

Sunflower Limited, (ii) assignment of fire insurance in the sum of \$1,500,000.00 and \$300,000.00 respectively, over the building erected on the property and its contents, and (iii) assignment of an insurance policy on the life of Henry Liu for \$200,000,000.00.

Evidence in Opposition

- [8] The affidavit in response to the application was deposed by Simona Jn. Baptiste-St. Marthe on behalf of the judgment creditor. She avers that all the particulars required under Part 72 had been met, namely that Judgment creditor (i) set out the amount of interest due as at the date of the Judgment and the per diem interest due thereafter, quite obviously up to the date of the Registration Application, (ii) specified the identity of the Judgment creditor as “RBTT Bank Caribbean Limited” which clearly identified the judgment creditor’s trade and business, of which the judgment debtors are well aware. She went on to confirm that the judgment creditor is a bank duly registered to conduct banking business in St Vincent and the Grenadines. She also states that the first and second judgment debtors Henry Liu and Feng Huang are businesspersons being directors, owners and operators of the third judgment debtor, Sunflower Limited, a retail business which is again known to them, and they have suffered no prejudice on account of any alleged omission of these matters.
- [9] Ms St Marthe deposed that there is no requirement for providing details of security held by the judgment creditor in St Vincent, as enforcement of the Judgment in Saint Lucia pursuant to section 9 of the Supreme Court Act² (“the SCA”) is not dependent on the judgment creditor having exhausted enforcement efforts in St Vincent and the Grenadines, nor is such disclosure required under Part 72. She says, in any event, the security held in St Vincent was useless because the Inland Revenue Department (“IRD”) there has since 2016 notified in writing, of a claim of approximately \$2,500,000.00 owed by the judgment debtors in unpaid taxes and which must be paid within 15 days of a sale of the mortgaged property. She avers that the security is therefore immaterial as the building is in poor condition and any offer made in relation to it could not possibly satisfy the costs of the sale, the IRD’s claim, the judgment, and the growing legal costs of the judgment creditor. The letter from

² Cap 2.01 of the Laws of Saint Lucia.

the IRD and the most recent offer in respect of a sale of the mortgaged property were exhibited³. Ms St Marthe says, in any event, enforcement efforts in St Vincent and the Grenadines, which did not have the effect of satisfying all or part of the debt, was not required to be disclosed.

[10] Ms St Marthe says it is just and convenient for the Judgment to be registered here, as the only prejudice is to the judgement creditor, who would be prevented from pursuing enforcement proceedings against the only other known property of the judgment debtors, in circumstances where the Judgment has remained wholly unsatisfied, the judgment debtors have never denied owing the debt, and enforcement in Saint Lucia is clearly permitted by statute. She deposed that the Judgment, being an unconditional final order, is enforceable by sale or otherwise under the CPR which is applicable to St Vincent and the Grenadines. The judgment creditor was also entitled to seize and sell the mortgaged property even without the intervention of the court, by virtue of clause 7 of the Mortgage Indenture, and only filed court proceedings in St Vincent and the Grenadines to obtain a monetary judgment to expand its enforcement options. Further, it was clearly stated in the Registration Application that the judgment creditor is entitled to enforce the Judgment which itself is unassailable, whether under the EFJ Act or any other enactment.

[11] She stated further that the judgment debtors tacitly agreed to be bound by the jurisdiction of St Vincent, by agreeing to give effect to a registered security there and maintained a place of business in St Vincent as verified by the signatures of the first and second judgment debtors, as directors of the third judgment debtor, which is affixed to the mortgage exhibited to the affidavit in support of this application. The mortgaged property is the immovable property situate in St Vincent and the first and second judgment debtors are the owners of the said property. This suggests that they submitted to the jurisdiction of the courts in St Vincent in relation to this property, which is also the subject matter of the proceedings. Therefore, the judgment creditor was entitled to obtain the Order, on the criteria set out in the EFJ Act.

³ See Exhibits RBTT1 & 2

The Judgment Debtors Submissions

- [12] Counsel for the judgment debtors, Mr. Eghan Modeste submits that although section 9(3) of the SCA enables judgments obtained in one Member State to be enforced in another, such judgments must first be registered in the State in which they are intended to be enforced. The affidavit in support of the Registration Application⁴ was deficient and the judgment creditor cannot now advance evidence in support of an application which has already been determined. He submits that an order made on insufficient or improper evidence is irregular and a nullity and the party against whom such order is made is entitled to have it set aside as of right. He relied on pronouncements in **Deidre Pigott Edgecombe et al v Antigua Flight Training Centre**⁵ in support, in which the Court of Appeal highlighted the difference between considerations for setting aside a regular default judgement, as opposed to an irregular default judgment, which was a nullity and liable to be set aside without more.
- [13] Concerning CPR72.2 (b) and (c) Mr Modeste says the affidavit was deficient in that (i) it did not specifically state the amount of interest which had become due under the Judgment, up to the time of the Registration Application, and (ii) it did not state the trade or business of any of the parties to the matter. The terms **state** and **specify** are used in CPR72.2, and there is a distinction between an interest rate and the amount of interest. The affidavit merely mentioned the interest rate and daily rate but has not stated the amount due up to the relevant time. Thus, the requirements for registration set out in CPR72.2 were not met, the Order is irregular and should be set aside as of right.
- [14] Mr Modeste argues that the judgment creditor failed to provide a full and frank account of the particulars of the security already held in Saint Vincent and the Grenadines, and failed to advance any reason why this security could not be liquidated there to settle the judgment, or whether it was sufficient or insufficient for settlement. No structural report or valuation of the security was presented, to confirm the condition of the property or to satisfy the Court that upon sale of the property, the alleged tax liability and the judgement would not be satisfied. Registration of the judgment has led to the entry of an inhibition against the

⁴ Filed on 30th July 2020

⁵ ANUHCVP2015/0005

judgment debtors' property in Saint Lucia, which has caused severe prejudice by restricting their ability to mortgage or sell their property.

- [15] Counsel however says that should the Court consider the Order to be regular, it ought to be set aside in accordance with CPR72.7(2)(a), as it would not be just and convenient to enforce it in this jurisdiction. Additionally, the judgment creditor failed to show that the court in Saint Vincent and the Grenadines had jurisdiction as required by sections 6(2) and 6(3) of the EFJ Act and failed to show that the Judgment could be enforced by execution there, as required by section 4(1)(b) of the EFJ Act. Thus, the judgment ought not to have been registered and should be set aside.

The Judgment Creditor's Submissions

- [16] Counsel for the judgment creditor, Mrs Shervon Pierre, submits that once a judgment is obtained in any of the Member States of the Eastern Caribbean Supreme Court ("ECSC"), section 9(3) of the SCA stipulates that such judgment of the court shall have full force and effect and may be enforced in any one of the other States. She submits however, that the provisions of the EFJ Act contradict section 9(3) of the SCA, as the former specifies that only money judgments can be enforced and provides a host of requirements for recognition, registration and enforcement of foreign judgments, which includes judgments from other Member States. Mrs Pierre submits that the provisions of the SCA must prevail in the face such contradiction, and the judgment creditor was entitled to the Order as of right. Further there was no irregularity in the Registration Application which would warrant setting aside the Order.
- [17] Counsel submits that the enforcement methods available to the judgment creditor would depend on the options available in Saint Lucia, and the judgment creditor is permitted to pursue any and all means of enforcement available simultaneously, under article 425 of the Code of Civil Procedure.⁶ Nevertheless, registration of the Judgment against the Property can only be achieved by registration of a judicial hypothec pursuant to article 1923 of the

⁶ Cap 4.01A of the Laws of Saint Lucia

Civil Code⁷. The Registrar of Lands in Saint Lucia is not directly empowered by article 1923 to register a judgment which does not emanate from the courts in Saint Lucia, hence the reason for the Registration Application made under Part 72, to give effect to the domestic requirements in the enforcing state, in this case Saint Lucia.

[18] Mrs. Pierre says that in order to reconcile the provisions of section 9(3) of the SCA with the EFG Act it would have to be read as follows: “*The process of the Supreme Court shall **[subject to certain pre-requisites]** run throughout the States and any **[money]** judgment of the Court **[which is duly registered in a relevant State]** shall have full force and effect **[subject to the provisions of any relevant enactments in the States]** and may be executed and enforced in any of the States.*” This she says would be stepping into the shoes of a legislator and would offend the rules of statutory interpretation, and as such they cannot be reconciled.

[19] Concerning non-compliance with the requirements of CPR72.2 (b) and (c), Mrs Pierre contends that the amount of interest owed at the date of the Registration Application and the trade or business of the parties are evident from the contents of the affidavit in support. The date of the judgment, principal sum, interest rate and rate per day have all been included thus allowing the registering court or any party to ascertain the amount due as at the date of the Registration Application. The judgment creditor’s trade was obvious and ascertainable, and the judgment debtors were themselves knowledgeable of the matters alleged as omissions, and could suffer no prejudice from such omission. In any event, the Court is empowered under CPR 26.1 (6) on a written or oral application to dispense with compliance with any of the rules, in exceptional circumstances. Further evidence of contained in the judgment creditor’s affidavit in response to the present application has cured any defect and has put these matters right, which in any event, could not have been fatal to the Registration Application.

[20] In relation to the alleged non-disclosures, Mrs. Pierre submits that the existence of mortgaged property against which the IRD had claimed a significant preferential debt, was not material to the Registration Application and did not need to be disclosed. The judgment

⁷ Cap 4.01 of the Laws of Saint Lucia

creditor has provided evidence in its affidavit in response that whatever the value of the mortgaged premises, the highest offer which has been received to date of \$2.2 million, would not meet the IRD' preferential claim of \$2.5 million, let alone the judgment debt of over \$3.0 million. Thus, the value of the property and other factors raised by the judgment debtors are completely irrelevant. Counsel further submits that the judgment creditor has no obligation under Part 72 to show that other possibilities or efforts at enforcement have been exhausted. The only obligation for such disclosure would be where other enforcement measures have resulted in a reduction in the Judgment, which is not the case here.

[21] Regarding the EFJ Act, Mrs. Pierre submits there can be no doubt that the courts of Saint Vincent and the Grenadines grant reciprocal treatment to judgments from Saint Lucia. The court in Saint Lucia is therefore empowered under section 3 of the EFJ Act to treat the judgment as one emanating from Saint Lucia, as long as it is conclusive and final and relates to a monetary debt - all of which is the case. It is also the case that the judgment remains wholly unsatisfied, and the judgment creditor has satisfied section 4 (1) (a) of the EFJ Act. In relation to section 4(1)(b), the Judgment could in fact be enforced by execution in St Vincent and the Grenadines as the judgment debtor could have proceed with sale of the secured property on the basis of the mortgage indenture alone, without the approval of the court.

[22] Mrs Pierre contends that contrary to the matters being raised in relation to the Registration Application, the sole issue to be determined on the present application is whether the Order should be set aside in accordance with the provisions of section 6 of the EFJ Act. She submits that the provisions in section 6(1)(a) are mandatory and applicable, while those in section 6(1)(b) are discretionary and not applicable to this case. In relation to section 6 (1) (a) (i) the judgment debtors have not pointed to any "contravention" of the EFJ Act, and there are no applicable public policy considerations which would warrant consideration of section 6 (1) (a) (v). In relation to section 6 (1) (a) (ii), section 6(2) defines cases in which jurisdiction will be presumed. Any of the factors in section 6 (2) (a) can be satisfied, which in addition to satisfying section 6 (2) (b) and (c) will establish that the original court had jurisdiction. She contends that section 6 (2) (a) (i) and (ii) are inapplicable and jurisdiction cannot be established on those points. However, section 6 (2) (a) (iii) applies as the

judgment debtors were each defendants in the proceedings in Saint Vincent and the Grenadines, and even prior to the proceedings had accepted the jurisdiction of the courts there in relation to the mortgaged property. At the very least they agreed to be bound by the jurisdiction of the courts in Saint Vincent and the Grenadines when they executed and registered the mortgage indenture which is governed by the laws of that country. Counsel says this conduct is unequivocal and leads to the conclusion that the judgment debtors agreed to be subject to the jurisdiction of the courts of Saint Vincent and the Grenadines.⁸

[23] Mrs. Pierre further submits that the judgment debtors satisfied the provisions of section 6(2) (a) (iv) as at the time of the proceedings, the third judgment debtor Sunflower Limited had its principal place of business in Saint Vincent and the first and second Judgment debtors both held key offices in the said business. The proceedings were in respect of a transaction effected by each of the judgment debtors through the office of the third judgment debtor as seen in the mortgage indenture which they have exhibited. Counsel submits that the Judgment was given in relation to immoveable property in Saint Vincent and therefore accords with section 6(2) (b). Lastly, in relation to section 6 (2) (c), the jurisdiction of the courts of Saint Vincent and the Grenadines, as a Member State, is most certainly recognized by the courts of Saint Lucia. Thus, the presumption of jurisdiction set out in section 6 (2) must stand.

[24] Counsel argues that the Judgment debtors have not once claimed that they are not indebted to the judgment creditors for the amounts stated in the Judgment. The judgment creditor has stated that it is not aware of any other assets owned by the judgment debtors against which the Judgment can be enforced, apart from the mortgaged security which is subject to priority claims of the IRD in St Vincent and the Grenadines. Thus, the only other property available for enforcement is in this jurisdiction, and provides a compelling reason why it is both just and convenient to have the Judgment registered here.⁹

[25] In concluding, Mrs Pierre submits that even if the judgment debtors are successful on this Application, section 7 of the EFJ Act allows an order setting aside registration to be made

⁸ Seng at al v Caldictott Worldwide Ltd- BVIHCOMAP2020/0020 at paragraph 20 et seq.

⁹ Star Reefers Pool Inc. v KFC Group Co. Ltd. -CLAIM NO: BVIHC (COM) 2012/0008- at paragraph 3

without prejudice to the judgment creditor's right to re-apply. Section 10 also recognizes that even if the order is set aside, the judgment creditor has a right to bring proceedings in Saint Lucia and the Judgment must, without more, be taken as conclusive proof of the debt, such that the judgment creditor would be fully entitled to have the inhibition maintained pursuant to section 83 of the Land Registration Act¹⁰, irrespective of the outcome on this application.

- [26] In responding to Mrs Pierre's submission regarding continuity of the inhibition, Mr Modeste stated that the inhibition finds its legitimacy in, and is a part of the Order. If the Order goes the inhibition would automatically fall away and would have to be removed from the land register for the Property.

Issue 1: Which is the law and procedure that governs the applications?

- [27] These applications have placed a spotlight on the substantive and procedural law which governs enforcement of a money judgment from the court in Saint Vincent and the Grenadines, in this jurisdiction. The judgment debtors say it is governed by the EFJ Act and Part 72 of the CPR. The judgment creditor says there is a conflict between the provisions of the SCA and the EFJ Act, recognition, and enforcement are governed by the SCA which prevails, and neither the EFJ Act nor Part 72 have any bearing on these matters, save that it was necessary to proceed under Part 72 in order to register a judicial hypothec in fulfilment of the requirements of the Civil Code and the Land Registration Act. Nonetheless, the judgment creditor prudently deployed the Registration Application in accordance with the requirements of both the EFJ Act and Part 72, in the event the Court should find that both regimes apply.

- [28] In determining whether any inconsistency arises between the SCA and the EFJ Act which should or may be reconciled, or whether one prevails over the other, a good starting point is the commencement date of these statutes and their ambit. The EFJ Act came into force on 28th September 1935 and the SCA on 27th February 1967. As such the EFJ Act precedes the SCA. The SCA contains a single provision in relation to recognition and enforcement of

¹⁰ Cap 5.01 of the Revised Edition of the Laws of Saint Lucia

judgments, which is section 9(3). The provision is general in nature and deals with enforcement of judgments among the States which fall within the jurisdiction of the ECSC. The EFJ Act on the other hand, is entirely about enforcement of foreign judgements and sets out in detail the substantive and procedural law in respect of same.

[29] Section 9 of the SCA provides:

“9. Jurisdiction in the States

(1) The High Court shall have, in relation to a State, such jurisdiction and powers as may be conferred on it by the Constitution or any other law of the State.

(2) The Court of Appeal shall have, in relation to a State, of such jurisdiction to hear and determine appeals and to exercise such powers as may be conferred upon it by the Constitution or any other law of the State.

(3) The process of the Supreme Court shall run throughout the States and any judgment of the Court shall have full force and effect and may be executed and enforced in any of the States.

(4) The provisions of subsection (3) of this section shall be without prejudice to the provisions of the constitution of each State relating to fundamental rights and freedoms.” [Emphasis added]

[30] In Part 72 of the CPR, made pursuant to section 17 of the SCA, it states in CPR 72.1 (a) that:

“This Part deals with the procedure whereby under the provisions of any enactment a judgment of a foreign court or tribunal may be registered in the High Court for enforcement within a Member State or Territory.”

[31] Section 3 of the EFJ Act, cited by both Counsels provides as follows:

“3. Power to extend Part 1 to foreign countries giving reciprocal treatment

(1) The Governor General, if he or she is satisfied that in the event of the benefits conferred by this Part being extended to judgements given in the superior courts of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgements given in the superior courts of Saint Lucia, may by order direct—

(a) that this Part shall extend to that foreign country; and

(b) that the courts of that foreign country specified in the order are superior courts of that country for the purposes of this Part.

(2) A judgement of a superior court of a foreign country to which this Part extends other than a judgement of such a court given on appeal from a court which is not a superior court shall be a judgement to which this Part applies, if —

(a) it is final and conclusive as between the parties; and

(b) there is payable under it 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 extend to that foreign country.*
- (3) *For the purposes of this section, a judgement is final and conclusive although an appeal may be pending against it, or although it may still be subject to appeal, in the courts of the country of the original court.*
- (4) *The Cabinet may by a subsequent order vary or revoke any order previously made under this section. (Amended by Act 14 of 1991)”*

[32] Section 3 falls within Part 1 of the EFJ Act which concerns ‘Enforcement of Foreign Judgements by Reciprocity.’ The remaining provisions of Part 1 are section 4 which deals with the ‘Application for and Effect of Registration of Foreign Judgements’, section 5 which deals with the ‘Power to Make Rules of Court’, section 6 which deals with ‘Cases in which Registered Judgements must, or may be Set Aside’, section 7 which deals with ‘Powers of Registering Court on Application to Set Aside’, section 8 which provides for ‘Foreign Judgements which can be Registered not to be Enforceable Otherwise’; and section 9 which deals with the ‘Power to apply Part 1 to other parts of Commonwealth.’ Part 2 contains miscellaneous and general provisions.

[33] The SCA has not expressly repealed the EFJ Act as between Saint Lucia and the other States within the ECSC. Regarding implied repeal the Court of Appeal decision in **Ferdinand James v Planviron (Caribbean Practice) Limited and Rodney Bay Marina Limited**,¹¹ sets out the applicable principles as follows:

*“[22] ... The principles on implied repeal are trite and have remained virtually unchanged since the 19th century. In **Kutner v Phillips**,¹² Al Smith J said:*

*“[A] repeal by implication is only effected when the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one that the two cannot stand together.... **Unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time a repeal will not be implied and special Acts are not repealed by general Acts** unless there is some express reference to the previous legislation, or unless there is a necessary inconsistency in the two Acts standing together.”*

...

¹¹ SLUHCVP2017/0050

¹² [1891] 2 QB 267 at p 271.

[23] Floissac CJ in **Attorney General of Antigua and Barbuda and another v Lewis (Arland)**,¹³ accepted the following principles on implied repeal in **Halsbury's Laws of England**¹⁴, which are germane for these purposes:

"966. Repeal by implication is not favoured by the courts, for it is to be presumed that Parliament would not intend to effect so important a matter as the repeal of a law without expressing its intention to do so. However, if provisions are enacted which cannot be reconciled with those of an existing statute, the only inference possible is that, unless it failed to address its mind to the question, Parliament intended that the provisions of the existing statute should cease to have effect, and an intention so evinced is as effective as one expressed in terms.

...

The rule is, therefore, that one provision repeals another by implication if, but only if, it is so inconsistent with or repugnant to that other that the two are incapable of standing together. **If it is reasonably possible so to construe the provisions as to give effect to both, that must be done**, and their reconciliation must in particular be attempted if the later statute provides for its construction as one with the earlier, thereby indicating that Parliament regarded them as compatible, or if the repeals expressly effected by the later statute are so detailed that failure to include the earlier provision among them must be regarded as such an indication."(Underlining supplied)."

[34] Subsequently, in **Sylvester Spencer and Honora Thomas (As The Administrators Of The Estate Of Jadianne Spencer, Deceased) v Regino Nicholas**¹⁵, the following principles were enunciated in circumstances similar to the present case:

"[29] How then is this Court to reconcile the above conflict? Bennion on Statutory Interpretation¹⁶ at section 6.10 states that '[w]here the provisions of an Act are inconsistent with the provisions of an earlier Act, the earlier provisions may be impliedly repealed by the later'. Section 6.10 goes on to state as follows:

"There is a general presumption against implied repeal or implied revocation of a common law rule. The effect of the presumption is that courts should where possible, interpret the provisions of a later Act in a way that is compatible with the earlier one.

...

The presumption in this context is sometimes expressed in terms of the maxim generalia specialibus non derogant (a general provision does not derogate from a special one), which is in Jenkins' Exchequer Reports. Although it is sometimes treated as an exception to implied

¹³ (1995) 51 WIR 89.

¹⁴ Halsbury's Laws of England (4th edn., 1973) Vol. 44 at paras 966 and 969.

¹⁵ ANUHCVP2019/0022

¹⁶ 7th Edition, section 6.10 page 206-209.

repeal it is really just one example of circumstances in which the presumption against implied repeal is particularly strong.

*The explanation of the rule by Earl of Selborne LC in **Seward v The Vera Cruz (owners)**, **The Vera Cruz** is often cited:*

‘... where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specifically dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words, without an indication of a particular intention to do so.’

*Similarly in **Blackpool Corp v Starr Estate Co Ltd** Viscount Haldane said:*

‘... wherever Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the Legislature lays down a general principle, that general principle is not to be taken as meant to rip up what the Legislature had before provided for individually, unless an intention to do so is specially declared. A merely general rule is not enough, even though by its terms it is stated so widely that it would, taken by itself, cover special cases of the kind I have referred to. An intention to deal with them may, of course, be manifested, but the presumption is that language which is in its character only general refers to subject-matter appropriate to a class as distinguished from individual treatment. Individual rights arising out of individual treatment are presumed not to have been intended to be interfered with unless the contrary is clearly manifest.’

- [35] In that case, the Court of Appeal, held that the plain reading of section 4 of the Fatal Accidents Act of Antigua conflicted with section 23 of the Supreme Court Act since section 4(2) specifies a jury as the sole authority for the assessment of damages in fatal accident claims and section 23(2) stipulates that the granting of a jury shall in every case be discretionary. Section 4 predated section 23 and created a special procedure for damages to be assessed and apportioned by a jury in fatal accident claims. This special procedure which was deliberately created by Parliament had not been derogated from by section 23, as there was no express revocation under section 23, of what had been specially provided for under section 4. The Court also concluded that there was nothing in section 23 which specially declared an intention to include fatal accident claims as being part of the general provision that the granting of a jury shall in every case be discretionary. Thus, both section 4 and section 23 stood together, and effect could be given to both.

[36] Applying these principles to the present case, I am of the view that section 9(3) of the SCA does not conflict with the EFJ Act, neither does Part 72 of the CPR. It is reasonably possible to construe section 9(3) and Part 72 in a manner which is compatible with the EFJ Act, to give effect to both statutes, and that is what the authorities stipulate must be done. Although Mrs. Pierre points out that the SCA provides that any judgment from one State may be enforced in another, whereas the EFJ Act specifies that only money judgments can be enforced, I do not accept that the SCA provision is an outright mandatory requirement for judgments to be recognized and enforced across States, without more. It simply provides the broad treatment to be given to judgments among States of the ECSC and there is nothing in the section which excludes compliance with specific domestic legislation that contains requirements or conditions for registration in aid of enforcement of such judgments.

[37] Considering the pre-existing substantive provisions of the EFJ Act and the presumption against implied repeal, it seems highly unlikely that Parliament, would have intended, without expressly stating such intention, to give an unqualified right to enforce a judgment given outside of the courts of Saint Lucia without any safeguards. The EFJ Act provides the details of the procedure to be followed in recognizing, registering, and enforcing such judgments. I therefore conclude that it is safe to determine the application on the basis of the EFJ Act and supporting Enforcement of Foreign Judgements Rules ("EFJ Rules"), which are contained in the EFJ Act, and made pursuant to section 5 thereof. These rules also happen to be similar, in every material particular, to the rules contained in Part 72 of the CPR.

[38] In my opinion the Registration Application met the requirements for granting an order for registration of the Judgment under the EFJ Rules. It was made *ex parte* and supported by affidavit. The affidavit in Support of Justinian Charles dated 27th July 2020 exhibited a verified or certified or otherwise duly authenticated copy of the Judgment (paragraph 8). The terms of the Judgment were clearly set out, stating the interest rate per annum, together with the per diem or daily rate at which interest would accrue from the date of the Judgment. It was also stated that to the best of the information and belief of this deponent,

the judgement creditor is entitled to enforce the Judgement (paragraph 10) and the Judgement may be ordered to be registered for enforcement under relevant enactments (paragraph 14).

[39] The EFJ Rules require that the affidavit must also, so far as the deponent can, give the full name, title, trade or business and usual or last known place of abode or business of the judgement creditor and judgement debtor, respectively. There is also a similar stipulation in the CPR72.2(c). Contrary to what Mr. Modeste contends, neither the EFJ Rules nor Part 72 requires the deponent to state the name and trade and business of the judgment debtors. The provision uses the disjunctive 'or' such that stating either of the name, trade or business is sufficient to meet the requirement. Indeed, the name of the judgment debtors are duly set out at paragraphs 2 and 7 of the affidavit of Justinian Charles. In any event, the EFJ Rules and CPR both state "so far as is known to the deponent" which suggests that any omission in this regard would not be fatal. The conjunctive 'and' precedes the last known place of abode or business and is therefore an additional requirement. The last known place of abode/business of the judgment debtors is set out at paragraphs 4, 5, and 6 of the respective affidavit.

[40] In respect of the complaint regarding interest, the date of the judgment, principal sum, interest rate and rate per day were all included in the Registration Application, thus allowing the Court and parties to ascertain the amount due as at the date of that application. In my view these minor errors or omissions complained of by the judgment debtors, were not fatal, to cause the Order to be irregular and liable to be set aside. The Judgment debtors would have suffered no prejudice from such omissions. As long as compliance is substantial and has not caused prejudice this would be sufficient for granting the Order. It is well accepted that in the absence of stipulation to the contrary, form is not to be exalted over substance. A contrary approach would not further the overriding objective of dealing with cases efficiently and justly, particularly where the CPR empowers the court to dispense with strict compliance with the rules under CPR 26.1 (6) and to put matters right under CPR26.9. In the circumstances, all the requirements for granting the Order were met under both the EFJ Rules and Part 72 of the CPR.

[41] Mr. Modeste has provided no authority for his stance that similar treatment should be given to an application for registration or setting aside registration of the Judgement as is given to obtaining or setting aside an irregular default judgment. Part 13 of the CPR distinguishes between judgments which must be set aside (as of right) at CPR13.2, and which may be set aside (as a matter of discretion) at CPR13.3. In the same way this distinction was made in respect of default judgments, the same could have been done in relation to registration of foreign judgments in Part 72. As this was not done such treatment cannot be implied in these circumstances. The EFJ Act and Part 72 allow for an order for registration of a judgment to be set aside and detail the criteria for doing so. This is what must be applied and not the extraneous treatment for an irregular default judgment.

[42] Lastly, on this issue, I do not agree with Mr. Modeste that the Judgment creditor is not entitled to respond to the Application to Set Aside by providing further affidavit evidence. He has provided no support for this proposition, and the affidavit in response is not evidence in support of the Registration Application already granted, as he suggests, but is in relation to whether the Order should be set aside, which naturally touches and concerns the same subject and information. It is worth noting that the Registration Application cannot now, on an application to set aside the Order, be struck out as he has suggested.

Issue 2: Should the Order be set aside?

[43] Rule 12 of the EFJ Rules provides that a judgement debtor may, within the time limited by the order, apply to the Judge to set aside registration or to suspend execution of the Judgement. An order may be set aside if the Court is satisfied that the case comes within one of the cases under section 3(2) of the Act in which a judgement cannot be ordered to be registered, or that it is not just or convenient that a judgement should be enforced in Saint Lucia, or for other sufficient reason the court may order that the registration be set aside, or execution on the judgement suspended either unconditionally or on such terms as the court thinks fit and either altogether or until such time as the court shall direct.

[44] The requirements of Section 3(2) are that:

*“(2) A judgement of a superior court of a foreign country to which the Part extends
(a) is final and conclusive as between the parties; and
(b) there is payable under it 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) is given after the coming into operation of the order directing that this Part extend to that foreign country.”*

[45] Pursuant to section 3 (3), a judgement is final and conclusive although an appeal may be pending, or it may still be subject to appeal, in the courts of the country of the original court. There is no dispute that the Judgment here meets these requirements. Additionally, the judgment debtors have not been able to demonstrate that the judgment creditor has fallen afoul of any of the relevant considerations outlined in section 6 of the EFJ Act to warrant setting aside the registered Judgment, and the only question that remains is whether it is not just and convenient that it be enforced in Saint Lucia. This is materially the same as the requirements of CPR72.7, which addresses applications to set aside registration and provides that the Court may set aside the registration of a foreign judgment ***if it is satisfied that it is not just or convenient*** for it to be enforced in the jurisdiction or ***it falls within the categories of judgments which may not be registered under the provisions of the relevant enactment.***

[46] There is simply no requirement for the disclosures which the judgment debtors have raised. **Siong Beng Seng et al v Caldictott Worldwide Ltd.**¹⁷ outlines the main principles relating to non-disclosure, albeit that it concerns an *ex parte* application for permission to serve a claim out of jurisdiction. It is stated that:

“(i) The applicant on an ex parte application for permission to serve out must make full and frank disclosure of all material matters relevant to the decision whether or not to grant the application.

(ii) The test of materiality is whether the matter might reasonably be taken into account by the judge in deciding whether or not to grant the application.

(iii) Materiality is decided by the court and not by the assessment of the applicant or his legal advisers.

(iv) The duty of candour is a heavy one. It extends to additional facts that the applicant would have known had he made proper enquiries. The applicant is under a duty to present fairly the facts disclosed. Observance of the duty is essential to secure the integrity of the court process and to protect those potentially affected by whatever order the court is invited to make.

¹⁷ BVIHCMAP2020/0020 at paragraph 23

(v) A balance must be maintained between marking the court's displeasure at the non-disclosure and doing justice between the parties.

(vi) A distinction should be drawn between non-disclosure which amounts to an attempt to deceive the court, and a negligent failure to state certain facts which should have been stated.

(vii) If there is a finding of material non-disclosure the court may discharge the order granted even though the applicant may be able to make another application that would succeed.

(viii) In exercising its discretion, the court should assess the degree and extent of any culpability on the part of the applicant. Whether the fact not disclosed is a sufficiently material to justify setting aside the order for service out will depend on the importance of the fact that the issues which were decided on the application. The decision to set aside is essentially one of degree and the judge's view should carry great weight."

[47] The existence of the mortgaged property in St Vincent and the Grenadines would not preclude the judgment creditor from taking other more fruitful enforcement measures to recover the debt. The judgement creditor is not bound to pursue enforcement against the secured property or to show that all other enforcement possibilities or efforts have been exhausted. Therefore, disclosure of the mortgaged property is not material when assessed against the **Seng** principles outlined above. In any event the judgment creditor has provided satisfactory evidence, in the form of an offer letter for purchase of the mortgaged property at \$2.2 million and the letter from the IRD. The IRD has confirmed a significant tax liability of \$2.5 million, and it is highly unlikely that the judgment creditor will recover its debt from the proceeds of a sale of the mortgaged property. A valuation or structural report of the property is not necessary. If the judgement debtors are suggesting that the value of the property is sufficient, it is their responsibility to present this evidence to the Court.

[48] The Order was not improper or irregular and the judgment debtors have not denied that they incurred and owe the debt of almost \$3.0 million. As the debt is still outstanding, they cannot now complain about the sum being onerous or prejudicial to them or that they are unable to deal with the Property because the judgment creditor is seeking to enforce the Judgment against it. It is a fact that the debt remains outstanding, and the judgment creditor is entitled to seek enforcement of its Judgment.

[49] The judgment creditor has also indicated that it is not aware of any other assets owned by the judgment debtors against which it can enforce the Judgment. Meanwhile the judgment debtors have failed to indicate any prejudice they will suffer, save that the debt owed is a large sum and they are unable to mortgage or sell the Property in St Lucia. These matters are nothing more than the natural consequences of failure to settle the Judgment and cannot amount to prejudice, where the debt continues to remain wholly unsatisfied. On these facts, it is simply not open to the judgment debtors to say that it is not just or convenient to enforce the Judgment in this jurisdiction, and the justice and convenience of doing so lies squarely in favour of the judgment creditor.

[50] There is therefore no basis on which the Order for registration of the Judgment can be set aside.

Conclusion

[51] In concluding I make the following orders:

1. The application is dismissed.
2. Cost is awarded to the respondent/ judgment creditor in the sum of \$3,500.00

Cadie St Rose-Albertini
High Court Judge

By the Court

[SEAL]

Registrar