

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV2017/0440

**IN THE MATTER OF A JUDGMENT OBTAINED IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION, ENGLAND FILED ON 11TH JULY, 2017 CASE NO: HC-2015-
004349**

AND

**IN THE MATTER OF THE FOREIGN JUDGMENTS (RECIPROCAL
ENFORCEMENT) ACT CAP. 113 OF THE 2010 CONTINUOUS REVISED EDITION OF
THE LAWS OF GRENADA**

BETWEEN:

**KIM JEANPIERRE-JAPAL
PAULINE JAPAL-DONALDSON
AMANDA JAPAL**

Respondents/Judgment Creditors

AND

URMILA DEVI JAPAL

Applicant/Judgment Debtor

Appearances:

Ms. Linda Dolland for the Respondents/Judgment Creditors

Mrs. Sabrita Khan-Ramdhani for the Applicant/Judgment Debtor

2021: January, 5

DECISION

- [1] **GLASGOW, J.:** Leave was granted to the judgment creditors (“the respondents”) on 23rd January 2018 to register the United Kingdom (UK) judgment of Hodge J QC dated 10th July, 2017 (the judgment). The judgment proved the last will and testament of Ishmael Japal (deceased) and awarded costs against the judgment debtor/applicant (Mrs. Japal). Mrs. Japal has

presented this application to set aside the 23rd January 2018 order granting leave to register the judgment.

Relevant facts

- [2] On 26th October 2017, the respondents filed an application without notice pursuant to Rules 11.4 and 72.2 of the Civil Procedure Rules (“CPR”) for an order that the judgment rendered in Case No. HC-2015-004349 between Mrs. Japal and the respondents and, sealed on 11th July 2017, be registered as a judgment of the Supreme Court of Grenada pursuant to the Foreign Judgments (Reciprocal Enforcements) Act¹ (the Act) and for costs.
- [3] The 26th October 2017 application was supported by the affidavit of one of the respondents, Kim Jeanpierrie-Japal. The court granted the application on 23rd January 2018 without a hearing. The terms of the order, entered on 29th January 2018, gave permission to the respondents to have the judgment registered in Grenada and entered in the register of judgments.
- [4] Mrs. Japal is dissatisfied with the order granting leave to register the judgment. She filed this present application on 13th March 2018.
- [5] The grounds of the application are that:
- (1) On 11th July 2017, Honourable Hodge QC (Ag.) gave the judgment against her in case HC-2015-004349.
 - (2) The applicants in case HC-2015-004349 are the executrices of the estate of Ishmael Japal, deceased.
 - (3) Mrs. Japal is the widow of the late Ishmael Japal.

¹ Cap 113 of the 2010 Continuous Revised Edition of the Laws of Grenada

- (4) The judgment proved the will of the deceased and awarded costs against Mrs. Japal. By proving that will, Mrs. Japal has been effectively left without any provision under the estate of the deceased. Mrs. Japal had depended entirely on the deceased for her financial upkeep and has no finances, savings or income of her own.
- (5) The respondents have registered the judgment awarding costs in the sum of \$129,000.00 to be paid to them by Mrs. Japal but they have not yet obtained probate of the estate.
- (6) The respondents obtained the judgment by contending that the deceased was domiciled in the United Kingdom so that they could ground jurisdiction in the UK courts to hear the claim.
- (7) That Mrs. Japal had already filed proceedings in Grenada to determine the same issues ("the 2015 Grenada proceedings"). The court ordered a stay of the 2015 Grenada proceedings with the consent of the Mrs. Japal's previous attorney-at-law but without her knowledge or approval. The proceedings in the United Kingdom proceeded and led to this judgment. The issue of domicile has not been determined anywhere.
- (8) Mrs. Japal's new attorneys in the United Kingdom have commenced proceedings related to a claim for dependency under laws of the United Kingdom. In a pre-action protocol, the present lawyers for the respondents have been sent correspondence regarding a possible resolution of that dependency claim.
- (9) In response to the dependency claim, the respondents' UK attorneys are now claiming that the deceased was never domiciled in the United Kingdom and that he was domiciled in Grenada on his death. This is an overt attempt to resist those dependency proceedings and to resist a justifiable claim for dependency.

- (10) In any event, Mrs. Japal has a viable claim in constructive trust and proprietary estoppel against the estate of the deceased. She filed that claim against the respondents in their capacity as personal representatives of the deceased's estate.
- (11) Having regard to the original stance relating to the deceased's domicile, it is unjust, unconscionable and against public policy to allow the respondents to enforce the judgment against Mrs. Japal in Grenada.
- (12) It would also be against the interest of justice, unconscionable, and against public policy to allow the respondents to enforce the judgment against Mrs. Japal having regard to the present claim filed in the high court of Grenada.
- (13) This application was prepared to be filed on 12th March 2018, but counsel was called away to a personal emergency and this resulted in the delay of one day.

Mrs. Japal's affidavit in support of her application

- [6] On 13th March 2018, Mrs. Japal, filed an affidavit in support of her application. I observe that the application recites most of the points set out in the grounds.

Affidavit of Kim Jeanpierre-Japal in response

- [7] On 16th April 2018, Ms. Kim Jeanpierre-Japal filed an affidavit in reply and in opposition to the Mrs. Japal's application. In summary, she deposes that:
- (1) She was advised by counsel and verily believes that a grant of probate in the deceased's estate was not a condition precedent upon which the costs order in the judgment was made. Further, she states that the judgment did not prescribe a time for the respondents to apply for a grant of probate.

- (2) There was some delay in applying for the grant of probate as the respondents retained new counsel. The delay was also consequent upon the pre-action applications.
- (3) Mrs. Japal has not appealed the judgment. It appears that her only contention relates to the enforcement of the costs order arising from the judgement.
- (4) Neither the claim regarding the validity of the will nor the judgment determined the issue of the deceased's domicile.
- (5) Between the periods 28th October 2014 and 29th April 2015, Mrs. Japal filed caveats and made an appearance in the deceased estate in the Oxford District Probate Registry.
- (6) She states that counsel advised her that the claim in the United Kingdom was properly made given, inter alia the existence of the deceased's immovable assets being situate there.
- (7) In relation to the stay, she states that the grounds for the application for stay of the 2015 claim were fully ventilated in the stay application. She states that Mrs. Japal did not oppose the stay.
- (8) She denies the statement in paragraph 9 of Mrs. Japal's affidavit. She explains that it was the respondents who initiated the 2015 Grenada proceedings² in response to the grant of letters of administration to Mrs. Japal and her vesting the deceased estate to herself.
- (9) With respect to paragraph 11 of Mrs. Japal's affidavit, she states that her current attorneys in the United Kingdom sent a pre-action protocol letter, but denies that it concerned possible settlement of the dependency claim. Further, she admits that her attorneys in the United Kingdom challenged

² GDAHCV2015/0049

Mrs. Japal on the issue of the deceased's domicile in relation to the UK Inheritance Act.

- (10) Concerning the enforcement or registration of the judgment, she denies that this is unjust, unconscionable or contrary to public policy. She states that Mrs. Japal is attempting to avoid the costs order made thereunder.
- (11) In relation to paragraph 15 of Mrs. Japal's affidavit, she states that the judgment was final and conclusive and was obtained after a trial. Mrs. Japal was represented by counsel at the hearing. The costs awarded in the judgment were granted further to the unsuccessful challenge raised by Mrs. Japal.
- (12) It would be unjust and unconscionable to permit Mrs. Japal to initiate and pursue actions both in Grenada and United Kingdom for a portion of the estate whilst failing to pay the costs incurred by the respondents as result of her challenge to the validity of the will.
- (13) Mrs. Japal's 2018 claim in Grenada is an attempt to frustrate the respondents. Further, she is advised by counsel and believes that Mrs. Japal's claim in the United Kingdom under the Inheritance Act seeks the same remedies as the 2018 claim in Grenada. However, Mrs. Japal is pursuing both actions concurrently.
- (14) She prays that Mrs. Japal's claim be stayed on the basis of public interest to avoid a duplicity of claims on the same issue and because she has failed to satisfy the costs order of the judgment.
- (15) There is no good reason why the registration of the judgment in Grenada should be set aside or stayed. In the circumstances, she believes that it would be unconscionable and inequitable to restrain the enforcement of the judgment.

Issues

- [8] The issues to be determined are:
- (1) Whether Mrs. Japal's contention concerning the deceased's domicile is a good and compelling reason to set aside the registration of the judgment on the ground of public policy.
 - (2) Whether a stay of execution of the judgment should be granted pending the outcome of Mrs. Japal's 2018 fixed date claim.

Mrs. Japal's Submissions

- [9] On 29th October 2019, Mrs. Japal's legal counsel filed written submission on her behalf. Counsel submits that:

Public policy

- (1) A judgment of a foreign court may be registered in Grenada by virtue of section 4(1) of the Act. The court may also set aside the registration of a judgment under section 6 of the Act.
- (2) One of the questions that arises for consideration is whether the local court will enquire into matters that led to the judgment or whether the local court can go beyond such matters and consider extrinsic factors that extend beyond the proceedings that led to the judgment.
- (3) Counsel submits that section 6(1)(iv) of the Act provides that a judgment shall be set aside where it was obtained by fraud and section 6(1)(v) provides that registration will be set aside where it is contrary to public policy. When an applicant presents section 6 of the Act, the local court is not bound to review only the issues that led the foreign court to grant the judgment, but public policy at large.

- (4) Public policy can extend to issues that arise outside of those that addressed by the foreign proceedings. Public policy is not concerned with the registration of the judgment, but with its enforcement. Thus, the court is entitled to consider all matters from a public policy standpoint.
- (5) In relation to the proceedings in the United Kingdom leading to the judgment, counsel states that Mrs. Japal had attempted to challenge the validity of the will, but she was barred from so doing due to her delay in raising a challenge. Counsel submits that the oath to prove the will deposed that the deceased had died domiciled in the United Kingdom.
- (6) The respondents have abandoned their previous statement under oath and have now sought to assert that the deceased had died domiciled in Grenada. Counsel submits that the respondents have caused Mrs. Japal to incur significant costs and expenses. It is for this reason that Mrs. Japal has commenced a claim for constructive trusts to declare her share of the deceased's estate.

Stay of enforcement

- (7) The court may consider that it is proper to allow the registration of the foreign judgment, but that the just disposal of Mrs. Japal's 2018 fixed date claim requires that enforcement is stayed until the fixed date claim is determined.
- (8) Counsel submits that the costs order against Mrs. Japal amounts to a debt and asks whether it is proper to allow the judgment to be enforced without first allowing the fixed date claim to be determined.
- (9) The public policy exception under the Act is to be construed broadly and where the question relates to enforcement, then the overriding objective of "doing justice" between the parties must be brought to bear. Counsel submits that justice in this case requires that the enforcement of the judgment be stayed.

- (10) The court has an inherent jurisdiction to stay the execution of the judgment pending the determination of Mrs. Japal's 2018 claim. The enforcement of the judgment will be unconscionable in the sense that it is likely to destroy Mrs. Japal and place her in a position where she will be unable to properly pursue her claim against the estate. The enforcement of the costs order would effectively stifle her claim to declare her share of the estate.
- (11) The court has a discretion grounded in the overriding objective which obligates the court to do justice between the parties. Counsel submits that the general principles governing stays of execution where judgments are under appeal are applicable to the present application since they encapsulate the factors that the court must bear in mind whenever it is asked to order a stay of proceedings. Counsel submits that the Court of Appeal has accepted this approach to the exercise of discretion utilising the overriding objective.
- (12) Counsel submits that the foreign costs order arising out of the judgment relates to proceedings to prove the validity of the deceased will in solemn form. The 2018 claim was brought by the widow of the deceased for a declaration that she is entitled to a share in the deceased's estate on the principle of constructive trusts. Counsel submits that the enforcement of the costs order against Mrs. Japal, who is a widow and is impecunious may preclude her from pursuing her claim.

Respondents' submissions

- [10] Counsel for the respondents filed written submissions on their behalf on 8th November, 2018. Counsel submits that:-
- (1) In order to impeach the judgment before the court, Mrs. Japal must establish that there has been either procedural unfairness or a breach of substantive justice in the proceedings leading up to the judgment in the

United Kingdom. Dr. Winston Anderson's legal commentary, **Caribbean Private International Law**³ was proffered as authority for this posture. Counsel argues that Mrs. Japal has not satisfied either of the above factors on her application.

- (2) Counsel also presents **Flat Point Development Limited v Canisby Limited**⁴ where the court stated that “...**a foreign judgment may be impeached in an action for enforcement if it was obtained in proceedings that violated the principles of natural justice.**”⁵
- (3) Counsel however argues that Mrs. Japal was represented by counsel in the UK proceedings. In that regard, she entered pleadings along with evidence and her counsel was present and was heard at the trial. Therefore, Mrs. Japal had due notice and an opportunity to be heard. In any event, Mrs. Japal has not raised any allegation on this application that she had no notice of the proceeding in the United Kingdom or was denied an opportunity to be heard there. There is no allegation that the proceedings in the United Kingdom infringed on this court's standards of natural justice.
- (4) The respondents present the cases of **Adams v Cape Industries Plc**⁶ and of **Pemberton v Hughes**⁷ to support their view that the proceedings in the United Kingdom do not offend the Grenadian court's position on substantive justice. In **Pemberton**, the court opined that the “...**English courts never investigate the propriety of the proceedings in a foreign court, unless they offend against English views of substantial justice.**”⁸ Counsel argues that the grounds for the present application are factually erroneous and/or the facts as alleged did not form part of the proceedings in the UK claim.

³ (2nd Ed.,2014) Sweet & Maxwell at paragraph 10-027

⁴ ANUHCVP2016/0006

⁵ Flat Point Development Limited v Canisby Limited ANUHCVP2016/0006 at paragraph 50

⁶ [1990] Ch. 433

⁷ [1899] 1 Ch. 781

⁸ Pemberton v Hughes [1899] 1 Ch. 781 at page 790

- (5) Counsel states that none of Mrs. Japal's documents expose that the deceased's domicile was raised as either a basis for or a defence to the UK claim. Additionally and in any event, Mrs. Japal has not addressed the respondents' position that domicile was never an issue in the UK proceedings. Mrs. Japal exhibits correspondence between her UK attorney and the respondents' UK attorneys in the United Kingdom. Counsel explains that these documents are dated after the judgment and did not form part of the proceedings that led to the judgment.
- (6) With respect to the stay of the 2015 Grenada claim, counsel maintains that the allegation that Mrs. Japal had already filed proceedings in Grenada to determine the same issues, is false. She avers that it was the respondents' who initiated the 2015 proceedings in Grenada against Mrs. Japal in relation to the deceased's estate. The issue of domicile never arose for determination in the 2015 Grenada claim. The 2015 claim was stayed with the consent of Mrs. Japal's attorney on record. The respondent's application for a stay of the 2015 Grenada claim together with affidavit in support were filed and served on Mrs. Japal. Accordingly, Mrs. Japal's consent to the same is irrelevant as she is bound by her attorney's actions and at no time did she raise her lack of consent in the proceedings in the UK claim or the 2015 Grenada claim.
- (7) In relation to Mrs. Japal's dependency claim in the United Kingdom, counsel states that those proceedings and her 2018 Grenada claim could not and did not form part of the proceedings leading up to the judgment in the United Kingdom. They are therefore irrelevant to a consideration by the court as to whether the procedure or conduct of the UK claim proceedings were fair or just. Even if these factors were relevant to this application, they are both based on a recognition and acceptance of the judgment and thus operate against Mrs. Japal's contention that the judgment is unjust or unfair.

Would the enforcement of the judgment be contrary to public policy?

- (8) Counsel notes that the proceedings in the United Kingdom were initiated as a result of caveats filed by Mrs. Japal. Further, the court in Grenada applies the UK Non-Contentious Probate Rules, 1987 (“the probate rules”). Therefore, Mrs Japal cannot sustain the argument that the application of the probate rules as the relevant foreign law and/ or the judgment acquired under foreign law outrages the “*sense of justice, decency or morality*”.
- (9) With regard to Mrs. Japal’s contention concerning the deceased’s domicile and her 2018 claim, counsel repeats her rejection of the allegations as factually inaccurate. She further posits that Mrs. Japal’s domicile contention is irrelevant to the defence of natural justice. The existence of Mrs. Japal’s 2018 claim that was filed on the same date as the instant application, cannot be a viable public policy reason not to enforce the judgment. Counsel submits that to allow such an argument to succeed would, in fact, be contrary to the judgment debtor’s legitimate expectation of realising the fruits of his or her judgment.

Should the enforcement of the judgment be stayed?

- (10) With respect to the issue of a stay of execution of a judgment, the Court of Appeal in **Marie Makhoul v Cicely Foster**⁹ has stated that “*there must be good reasons for depriving ...a successful litigant from reaping the fruits of a judgment in his favour*”¹⁰. Counsel submits the following reasons why the judgment should not be stayed:
- (a) The judgment does not constitute proceedings that may be stayed or a judgment that is being appealed, for which stay of execution is being sought.

⁹ HCVAP2009/014

¹⁰ Marie Makhoul v Cicely Foster HCVAP2009/014 at paragraph 3

- (b) Mrs. Japal's 2018 claim does not constitute a counter-claim to the judgment for which a stay could or should be granted pending its outcome.
- (c) Even if Mrs. Japal 2018 claim was connected to the judgment, there is no evidence before the court of the content of that claim to assess whether there is a reasonable prospect of success.
- (d) There is no allegation or assertion by Mrs. Japal that she would face personal or financial ruin if the court refuses a stay of the enforcement of the judgment.
- (e) Mrs. Japal has not adduced a factual basis, statement or evidence of her income, expenditure or means to satisfy the judgment, save for her bald statement that she has "*no finances, savings or income*".
- (f) Finally, if the judgment is enforced in Grenada, this has no bearing on whether Mrs. Japal can proceed with her 2018 claim. The enforcement of the judgment does not stifle Mrs. Japal 2018 claim or render the claim nugatory.

Discussion

- [11] Mrs. Japal applies to set aside the judgment or stay its enforcement because (1) that it was against public policy to register it; and (2) it would be just to stay the enforcement because of the extant 2018 Grenada claim. The factual and legal basis for both positions have been set out above. I disagree with Mrs. Japal on both grounds for the reasons to follow.

Public Policy

- [12] It has been observed that our local courts may refuse recognition of foreign judgments "*on grounds of incompatibility with local notions of substantive justice or the national interest.*"¹¹ Indeed, section 6 (1)(v) of the Act enjoins the court

¹¹ Caribbean Public International Law, 2nd Edn, para. 6-024

to set aside a foreign judgment where its enforcement would be contrary to public policy. While it may not be possible to definitively outline the contours of the concept, Professor Anderson observes that “... *public policy is akin to the notion of practical justice; of ensuring that the rules of Private International Law further the objective of the just decisions in individual cases within the context of the societal need for predictability and certainty.*”¹² Byron P, CCJ observed that:-

“Almost two hundred years ago, Burrough J. in **Richardson v. Mellish** famously noted that “public policy” is a very unruly horse. Once you get astride it, he warned, you never know where it will carry you. This admonition is especially prescient because the concept of public policy is fluid, open-textured, encompassing potentially a wide variety of acts. It is conditioned by time and place. Religion and morality, as well as the fundamental economic, social, political, legal or foreign affairs of the State in which enforcement is sought, may legitimately ground public policy concerns. Whether those concerns are of a substantive or procedural nature, if they are fundamental to the polity of the enforcing State, they may successfully be invoked...”¹³

[13] Indeed, in recognition of the fluidity of the doctrine and the possibility for subjective application, courts have been exhorted to be “*slow to use the doctrine of public policy to exclude the application of foreign laws or rights acquired under these foreign laws, including foreign judgments.*” In **BCB Holdings**, the court was asked to consider questions surrounding the enforceability of a foreign arbitration award. However, Byron P’s caution is equally applicable to the present circumstances when his Lordship stated that:-

“... courts should apply the public policy exception in a more restrictive manner than in instances where public policy is being considered in a purely domestic scenario. This is because, as a matter of international

¹² Supra, note 13 at para. 6-021

¹³ BCB Holdings Ltd & The Belize Bank Ltd. v The Attorney General of Belize [2013] CCJ 5 (AJ) at para 21

comity, the courts of one State should lean in favour of demonstrating faith in and respect for the judgments of foreign tribunals. In an increasingly globalised and mutually inter-dependent world, it is in the interest of the promotion of international trade and commerce that courts should eschew a uniquely nationalistic approach to the recognition of foreign awards.

The Court must be alive to the fact that public policy is often invoked by a losing party in order to re-open the merits of a case already determined by the arbitrators. Courts must accordingly be vigilant not to be seen as frustrating enforcement of the Award or affording the losing party a second bite of the cherry.”¹⁴

[14] The crux of Mrs. Japal’s complaint under this head of her application is that the respondents have, in essence, manipulated the question of the deceased’s domicile to frustrate the just disposal of her rights. She is concerned that the respondents’ allegedly vacillating approach to the question of domicile ought to offend the court’s sense of justice. Equally, she maintains that the enforcement of the foreign judgment will interfere with the just disposal of her 2018 claim. Her evidence and arguments are set out above, but see especially paras. 18 to 25 of her written submissions filed on 25th October 2019.

[15] I must confess that I am not entirely clear on Mrs. Japal’s complaint about the injustice involved in the registration of the judgment and in particular her arguments about the question of domicile. This is since, for one thing, the question of the domicile of the deceased was never part of the matters elucidated and pronounced upon by the English courts. It was, bluntly, never a fact in question. Any cursory examination of the proceedings, for instance, would expose that the deceased clearly was possessed of property in the United Kingdom for which both sides were engaging the English court’s jurisdiction. Equally, even if the court in the United Kingdom ought to have considered the

¹⁴ BCB Holdings Ltd & The Belize Bank Ltd. v The Attorney General of Belize [2013] CCJ 5 (AJ) at paras. 24-25

domicile question, the respondents are correct to point out that Mrs. Japal was actively engaged and participated in the hearing and determination of the UK proceedings. There was never a question raised about the court's jurisdiction in the matter. In these circumstances, it is difficult to see the basis for which a claim can be raised that the judgment should not be enforced.

[16] There is some attempt to connect the 2015 and 2018 claims to the outcome of the UK proceedings. I am, again, with regret, hard pressed to see the connection. The 2015 claim was solely concerned with setting aside the letters of administration granted to Mrs. Japal. The question of the deceased's domicile was not an issue at all in those proceedings. The 2018 claim and the dependency request in the UK are matters that arise after the judgment. Thus, it is difficult to agree with Mrs. Japal that this court ought to set aside the judgment because of matters that the UK court did not have before it during the proceedings leading to the judgment. Even if the court could do so as Mrs. Japal suggests, she has not demonstrated how the raising of the question of domicile on the dependency claim is not legitimate or is rather improper in a sense that ought to outrage this court's perception of what is just or moral or decent.

[17] The long and short of it is that I do not find that Mrs. Japal has presented this court with material that impels it to invoke its restrictive jurisdiction to set aside the registration of the judgment on grounds it is unjust, unconscionable and against public policy or substantial justice to permit the respondents to enforce the same in Grenada. There is simply no evidence that anything that has transpired in the trajectory of the various processes has unfolded in a manner that offends this court's sense of justice, decency or morality.

The stay ground

[18] Mrs. Japal also asks the court to stay the enforcement of the judgment pending the determination of the 2018 claim in Grenada. She requests the stay on the grounds that any enforcement would likely destroy her and cause her to be

unable to pursue her claim against the deceased's estate. In this regard, Mrs. Japal pleads and submits that she is effectively impecunious and relies on family for her present upkeep. She explains that she was entirely dependent on her deceased husband who left her with no provisions and that he reneged on various promises. These promises are the buttress of her constructive trust claim for an order declaring her interest in the deceased's estate. She concludes that the enforcement of the judgment against an impecunious widow may, in all likelihood, lead to an unjust outcome.

- [19] Mrs. Japal is correct that the court has the jurisdiction to stay proceedings in the interest of justice. She correctly recites the learning from **Hammond Suddard Solicitors v Agrichem International Holdings Ltd**¹⁵ where the principle is explained thusly –

“It follows that the court has a discretion whether or not to grant a stay. **Whether the court should exercise its discretion to grant a stay will depend upon all the circumstances of the case, but the essential question is whether there is a risk of injustice to one or other or both parties if it grants or refuses a stay.**”¹⁶ (Bold emphasis mine)

- [20] This court has great sympathy for Mrs. Japal's arguments about her penurious circumstances. It can hardly be the case that justice would insist that she proceeds to satisfy the costs order against her in a case where she (1) patently lacks the means to do so; (2) has been placed in that situation due to the manner which she and her deceased husband conducted their affairs; (3) the husband's estate retains, on trust, property and/or income that may assist her in meeting her obligations under the judgment; and (4) she is actively pursuing vindication of the latter. In my view, the court, if presented with material that cumulatively demonstrates the foregoing, may have a basis on which it may exercise the jurisdiction for a stay of the enforcement of the costs order. Unfortunately, this does not seem to be the case on this application.

¹⁵ [2001] EWCA Civ 2065

¹⁶ [2001] EWCA Civ 2065 [2001] EWCA Civ 2065 at para. 22

[21] In **Makhoul**, the applicant made the similar complaint that the enforcement of a money judgment pending the outcome of an appeal would be ruinous to her. In refusing the stay, the court concluded:-

“Unfortunately, the bald assertions by Ms. Makhoul that she will be personally and financially ruined, without establishing a factual basis for the assertion is most unhelpful in the exercise of a discretion to grant a stay and in assessing fairly, where the justice of the case lies. The burden is on her, as the applicant for the stay, to satisfy the court in this regard, the respondent having a judgment on the merits in her favour. This she has failed to do.”¹⁷

[22] I could not have more eruditely recited the same difficulty that confronts me on this application. Mrs. Japal has not presented any material on her pleadings that may discharge the evidentiary burden that falls on her to substantiate the claims that she (1) is presently impecunious, (2) relies on family for her upkeep, (3) relied on her husband entirely for her upkeep; and/or (4), would be ruined financially by the enforcement of the judgment. In view of the fact that these items are presented as the basis for her entreaties for a stay and in light of the absence of the necessary supporting facts, the stay must be refused because of the lack of material facts.

[23] A more compelling reason for dismissing this application is that there seems to be no correlation between the order for payment of costs under the judgment and the conduct of the 2018 claim for constructive trust. Mrs. Japal has not appealed against the costs order. It therefore remains a debt to be paid. The 2018 claim is a claim for an interest in the deceased estate. Mrs. Japal has not shown how an order to pay the costs of the UK judgment would inhibit or affect her ability to proceed on the 2018 claim. In fact, she has not shown the court

¹⁷ Marie Mahkoul v Cicely Foster ANUHCVP2009/014 at para 9

whether she has good prospects to succeed on the 2018 claim, but I assume that she stands to gain significant income if she is successful.

Conclusion

[24] For the foregoing reasons, I am not satisfied that Mrs. Japal is entitled to an order setting aside or staying the UK judgment. The application is dismissed. Mrs. Japal is to pay the respondents' costs in the amount of \$800.00.

Raulston L.A. Glasgow
High Court Judge

By the Court

Registrar