Registering a registered foreign judgment

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A recent article in this Journal raised the question of whether an Australian court may enforce a foreign judgment which is itself founded upon the judgment of another, different foreign court. This article deals with two cases in which the issue has arisen for decision, one involving registration of a foreign judgment in Australia, the other an attempt to register an Australian judgment in Papua New Guinea.

The article by P St J Smart, "Conflict of laws: Enforcing a judgment on a judgment?" (2007) 81 ALJ 349, analyses the question of whether an Australian court may enforce a foreign judgment which is itself founded upon the judgment of another, different foreign court. Readers may be interested to know of two decisions on point, the first concerning the registration of a Canadian judgment in New South Wales, the other dealing with registration of a New South Wales judgment in Papua New Guinea.

In *Taylor v McGiffen* (unreported, Supreme Court, NSW, CL, Wood J, No 12490 of 1985, 15 July 1985) the plaintiff initially brought proceedings against the defendant in the Supreme Court of Ontario for damages consequent upon the termination of a contract for the sale of land in Ontario. A consent judgment was entered in favour of the plaintiff in those proceedings in the sum of CAN$60,000.00 together with interest and costs. On 6 March 1985, the Ontario judgment was registered in the Court of Queen's Bench, Manitoba.

The *Foreign Judgments (Reciprocal Enforcement) Act 1973* (NSW) provided for registration in New South Wales of a judgment of a superior court of a foreign country, the subject of a declaration under the Act. The province of Ontario was not a jurisdiction, and its Supreme Court was not a court, declared under the Act. The province of Manitoba and the Court of Queen's Bench of that province were, however, the subject of a relevant declaration.

On 10 May 1985 an ex parte order was made by Master Hogan for registration of the Manitoba judgment in the Supreme Court of New South Wales. An application by the defendant before Wood J to set aside registration turned essentially upon the question whether a judgment given in a court of a country not declared under the Act could be registered in the Supreme Court of New South Wales by reason of an intervening registration in a declared court of a declared country.

The plaintiff argued that the legislation did not distinguish between a judgment given in a court by which rights in dispute are finally decided, and a judgment entered in another court based on that original judgment. It was sufficient, according to the plaintiff, if there could be found a registered judgment in a declared court of a declared country, that is, a country with reciprocity; no matter that it was not the original judgment and no matter that it may have been registered there only after successive registrations through jurisdictions having reciprocity with the place of the original judgment or the place of a preceding registration.

Wood J observed that the purpose of the Act, as expressed in the preamble, was to provide for enforcement in the state of judgments given in certain countries which accorded reciprocity of treatment of judgments given in New South Wales. His Honour took the view that forum-hopping was inconsistent with the scheme of the legislation. He said that the intention of the Act was to permit registration in the New South Wales Supreme Court of a judgment only if it is a judgment finally and for the first time determining rights in issue, and then only if there is a judgment of a relevantly declared court.

The judgment for registration purposes was that of the Ontario court which was not a relevantly declared court. The judgment of the Manitoba court was a judgment entered without consideration of the merits or issues and was registered and entered only by reason of reciprocity between the

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provinces of Manitoba and Ontario. Accordingly, it was not a judgment of the type which qualified for registration and the registration should be set aside.

The decision in *Taylor* was followed recently by the National Court of Justice of Papua New Guinea in *WorkCover Authority (NSW) v Placer (PNG) Exploration Ltd* [2006] PGNC 47; N3003 (13 March 2006). In that case the plaintiff and the defendant were each respondents in proceedings in the Compensation Court of New South Wales. On 15 November 2002, the Compensation Court ordered that the plaintiff pay the applicant in those proceedings (the widow of a deceased worker) $235,350 out of the WorkCover Authority Fund on the basis that the defendant was not insured as required by the *Workers Compensation Act 1998* (NSW). The Compensation Court further ordered that the defendant reimburse the WorkCover Authority.

On 2 November 2004 the Compensation Court order was filed in the registry of the Supreme Court of New South Wales pursuant to the *Workplace Injury Management and Workers Compensation Act 1998* (NSW), s 362. Under that provision, a certificate by the Registrar of the Compensation Court that is filed in the registry of a court having jurisdiction to give judgment for a debt of the same amount as the amount stated in the certificate, operates as a judgment of the latter court. In contested proceedings the WorkCover Authority then sought to register the Supreme Court judgment in Papua New Guinea.

In Papua New Guinea, the *Reciprocal Enforcement of Judgements Act 1976* (PNG), Ch No 50, follows the usual scheme of allowing for the registration of judgments of countries and superior courts which are declared under the Act. The Supreme Court of New South Wales is a superior court to which the Act extends, but the Compensation Court is not. The National Court (Lay J) refused the application by the WorkCover Authority to register the Supreme Court judgment in Papua New Guinea.

One of the grounds for refusing registration was that the relevant judgment was not of a declared court. In coming to that decision, the Papua New Guinea court expressly followed the decision in *Taylor*, saying that to qualify for registration the foreign judgment must be from a declared superior court which has itself, for the first time, heard and finally determined the matter in proceedings before it.

Lay J also observed that, under the Papua New Guinea legislation, a judgment of a declared superior court on appeal from a court that has not been declared is expressly excluded from registration. His Honour said it was difficult in these circumstances to accept that the Act intended to treat as a judgment of a superior court the judgment of a court not relevantly declared, which has been passed over a declared superior court registry counter, entered in a register, duly stamped and signed by the prescribed official without any consideration whatever by a judge of that court.

