

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT**

COMMON LAW AND EQUITY DIVISION

2019/CLE/gen/00596

IN THE MATTER OF Registering and Enforcing a Judgment from a Court in the United States of America at Common Law

AND

IN THE MATTER of All That piece parcel or Lot of Land situated on the Southern Point of Lubbers Quarter Cay in the Island of Abaco, in the Commonwealth of The Bahamas being Lot No. 133 in Abaco Ocean Subdivision

BETWEEN

**DALE PETERSON
(Florida, United States of America)**

Claimant

AND

**ROCKY GRIFFITH
(Florida, United States of America)**

First Defendant

**RANDY WILSON
(Florida, United States of America)**

Second Defendant

Before: Her Ladyship The Honourable Madam Senior Justice Deborah Fraser

Appearances: Mr. Arthur Minns for the Claimant
Mr. Alexander Maillis for the Defendants

Judgment Date: 14 December 2023

**Application for Recognition and Enforcement of a Foreign Judgment –
Application for Summary Judgment – In Personam Judgment – In Rem judgment
– Fair and Equitable – Natural Justice**

JUDGMENT

1. This is an application brought by the Claimant, Mr. Dale Peterson (“**Claimant**”) for the recognition and enforcement of a foreign judgment and summary judgment, based on a judgment made in Florida, the United States.

Background

2. The Claimant, Rocky Griffith (“**First Defendant**”) and Randy Wilson (“**Second Defendant**”) and collectively, the “**Defendants**”) were, at all material times alleged to be partners in the ownership of a house and its furnishing situated in Lot Number 133 in Abaco Ocean Club Subdivision on the Lubbers Quarters Cay on the Island of Abaco, one of the islands of the Commonwealth of The Bahamas (“**Property**”).
3. It is alleged that, in the Circuit County Court for the County of Okaloosa, situated in the State of Florida, one of the states of the United States of America, the Claimant brought an action against the Defendants (Case No. 2017-CA-1485) to have the said partnership dissolved (though this was not how the action was initially framed, this, according to the judge, was what the Claimant ultimately pleaded and desired – “**Florida Action**”).
4. Based on the pleadings of the Florida Action, the Honourable Circuit Judge Mr. Terrance Ketchel made the following conclusions:
 - a. **This Court has jurisdiction over the parties, as all have been served, all are before the Court, and all are represented.**
 - b. **By Florida and common law, and by agreement of the parties, the parties are “Partners” in the ownership of the Property described as “Lot 133, Abaco Ocean Club Subdivision, Lubbers Quarters Cay, Abaco, The Bahamas”, and the personal property and furniture located in The Bahamas.**
 - c. **The Court has no jurisdiction over the Property located in The Bahamas, but this is not an in rem proceeding. The Court does have jurisdiction over the members of the Partnership and over the Florida Partnership.**
 - d. **In Florida, any partner can legally dissolve a partnership by giving notice of an intent to withdraw, and upon such notice, the partnership, unless the partners decide otherwise, must wind up its affairs, pay its debts and distribute its assets among its partners.**
 - e. **The Partnership has no debt other than unpaid taxes to the Bahamian National Government, which debt can be paid from the proceeds of the sale of the Property and payment of that debt.**
 - f. **Again, while this Court does not have in rem jurisdiction over the Property of the Partnership, the Court does have jurisdiction over the partners and over the Partnership, and as such can legally exercise that jurisdiction by directing that the Partnership sell the asset (i.e., the Property), pay the remaining debt, and distribute the proceeds...”**
5. The Judge then made the following Order (with E-filing date of 20 November 2018) (“**Florida Judgment**”):

“1. Attorney Richard Torell, III, Esq. whose office address is 1241 Airport Road, Suite H, Destin, Florida 32541, is hereby appointed Special Master for the purpose of advertising the Property for sale, to conduct a sale, and thereafter to sign a certificate of sale of the real and personal Property (known to this Court as “Hardground”).

2. The Plaintiff is instructed to pay the costs of advertising the Property in Florida and in The Bahamas by legal advertisement according to Florida Law, for at least (30) days before the sale, and to sell the Property within ninety (90) days after this order, by public auction, from the Courthouse steps in Ford Walton Beach, Florida, at a time, place and date determined by the Special Master. The sale will be an “as is” sale but for the Partnership’s Warranty of Title.

3. The cost of the Special Master and all other costs of this action will be paid by Plaintiff and repaid from the proceeds of the sale.

4. The Property is to be advertised and sold expressly subject to payment by the purchaser of the expenses of the sale, the unpaid taxes, and subject to the execution and recording of a deed conveying the Property from the individual parties to this action, to the purchaser at public sale.

5. The Special Master is instructed to require all bidders to post an amount of at least 5% of the bid for the Property, and to pay the balance in cash by 4:30pm, to the Special Master on the date of the sale.

6. The proceeds of the sale are to be held by the Special Master, in trust, in Okaloosa County, Florida, until the conditions of paragraph four (4) above are met and until counsel for the parties consent to distribution or until further order of this Court.

7. This Court reserves jurisdiction to enter such further orders, upon application of either party, as may be necessary to accomplish the intent of this Court.

DONE AND ORDERED at Fort Walton Beach, Okaloosa County, Florida.”

6. It is alleged that, in pursuance of the Florida Judgment, the Special Master, Mr. Richard Troell executed a Certificate of Sale and granted a Certificate of Title to the Claimant.
7. The Partnership was allegedly dissolved by the Honorable Court in Florida and the Claimant purportedly paid Fifty Thousand (\$50,000) dollars (it is unclear in which currency) for the Property.
8. It is further alleged that there were no objections to the sale of the Property to the Claimant and the said sale was allegedly open and transparent.

9. On 02 May 2019, the Claimant filed a Writ of Summons against the Defendants requesting the following reliefs:

“a. An order for recognition and acceptance of the aforementioned Foreign Court Order and Judgment;

b. An Order to remove the Defendants’ name from the Title Deed of Lot Number 133 in Abaco Ocean Club Subdivision at Lubbers Quarters Cay on the said Island of Abaco;

c. An Order and/or a Declaration that the Plaintiff is the rightful owner of Lot Number 133 in the Abaco Ocean Club Subdivision at Lubbers Quarters Cay;

d. Any damages incidental to or occasioned by this action;

e. Any losses incidental to or associated with this action;

f. Costs;

g. Interest pursuant to the Civil Procedure (Award of Interest) Act 1992 at such rate and for such period as the Honourable Court deems fit and just; and

h. Any additional or further Orders which this Honourable Court may deem fit and just.”

10. The Defendants filed a Memorandum and Notice of Appearance on 23 August 2019, but no Defence was filed.

11. On 04 September 2019, the Claimant filed a Summons along with an affidavit on 05 September 2019 requesting Summary Judgment against the Defendants.

ISSUE

12. The issue that this Court must decide is whether the Court ought to order enforcement and recognition of the Florida Judgment and grant Summary Judgment to the Claimant?

EVIDENCE

Claimant’s Evidence

13. On 05 September 2019, the Claimant filed the Affidavit of Cachline Etienne (“**CE Affidavit**”) which provides: (i) that the Honorable Court issued an Order on 04 July 2019 permitting the Claimant to serve the Defendants with a Notice of Writ of Summons accompanied by the prescribed Acknowledgement of Service out of the Jurisdiction. After service was effected the Defendants entered a Memorandum and Notice of Appearance on 23 August 2019; (ii) there is no defence to the claim made; and (iii) Cachline Etienne repeats the contents in an affidavit filed on 20 May 2019.

14. The 20 May 2019 affidavit prepared by Cachline Etienne provides the history of the matter (as mentioned under the Background heading of this judgment).

Defendant's Evidence

15. On 28 October 2019, the Defendants filed the Affidavit of Rocky Griffith ("**RG Affidavit**") which provides: (i) Rocky Griffith is one of the named defendants in the action and holds a Power of Attorney allowing him to also speak for the Second Defendant herein (though no Power of Attorney is exhibiting evidencing such power to act); (ii) there is a Defence to the claim as appears from the draft defence exhibited to the RG Affidavit; (iii) all parties are owners as Tenants-in-common of the Property and that the Property was intended to be used as a vacation home (the Conveyance is exhibited with the Permit evidencing use of the Property as a vacation home); and (iv) On agreement of the Parties to expand the living space, Rocky Griffith, through his own expense, expanded the living area of the Property from 696 square feet to 1,960 square feet.

16. The RG Affidavit further provides: (i) the Parties agreed to rent the Property and Rocky Griffith managed the accounts of what became an operational partnership from 2010 to 2017 and from time to time funded any deficit out of his own pocket; (ii) The Defendants were having financial difficulties and the Claimant offered to buy their respective interests in the Property, but the Defendants were not interested in selling; (iii) In December 2017, the Claimant had the Property appraised without the First Defendant's knowledge or consent by TR Associates; (iv) the appraisal showed the value of the property to be \$423,000.00 (the appraisal is exhibited); (v) the Claimant commenced the Floridian Action solely to determine the partnership and force a sale; (vi) Real Property Taxes are owing on the Property totaling some \$88,859.72 as at 20 March 2019 (the tax certificate is exhibited to the affidavit) and that, to the First Defendant's knowledge, the Claimant has yet to pay his portion of the real property tax; (vii) The Defendants borrowed funds in order to pay \$51,283.58 representing their portion of payment for real property taxes on the Property; (viii) it would be gravely prejudicial and manifestly unfair to allow the Order of the US Court to be recognized in The Bahamas.

SUBMISSIONS

Claimant's Submissions

17. The Claimant's Counsel submits that recognition of the Florida Judgment and summary judgment against the Defendants ought to be granted. He further submits that the Defendants together with the Claimant took part in the proceedings before the Honourable Circuit Court in and for Okaloosa. He asserts

that all parties were afforded natural justice at the hearing and that all parties were represented by their respective counsel.

18. Counsel also asserts that no one appealed the Florida Judgment. He then cites Order 14 rule 1 of the Rules of the Supreme Court, 1978:

“Where in an action to which this rule applies a statement of claim had to be served on a defendant and that defendant has entered an appearance in the action, the Plaintiff may, on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of such a claim or has no defence to such a claim or part except as to the amount of any damages claimed,, apply to the Court for judgment against that defendant.”

19. He further submits that upon reviewing the draft Defence in the RG Affidavit, the issues mentioned therein were argued before the Circuit Judge in Florida and that, in effect, the Defendants are seeking an appeal of the Florida Judgment.

20. Counsel further contends that the Defendants had every opportunity to either appeal the Florida Judgment or to bid at the auction of the assets of the Partnership. He asserts that the Defendants sat on their rights.

21. Counsel then cites the case of **Grant v Easton 1883 Q.B.D. p. 302** for the following pronouncements (at pg 303):

“...the question is whether the defendant can show any defence to the claim made against him. Upon principle what difference can there be between an English and a Foreign Judgment in this respect? An action upon a foreign judgment may be treated as an action in either debt or assumpsit...”

22. Counsel also relies on the Bahamian decision of **Marla J. Cramin v Bahamas Divers Company Limited and Summit Insurance Company Limited – 2010/CLE/gen/01319 (“Cramin”)** where the Court at page 2 adjudged:

“Foreign Judgments are routinely enforced in The Bahamas, either by Statute...or by an action at common law based on the jurisdiction in which the foreign judgment was obtained...”

23. At page 62 of **Cramin**, the Court continued:

“Those which were pleaded were answered in Final Judgment of the Circuit Court and could have been canvassed before that Court. In my opinion, The Defendant sat on its rights.”

24. The Claimant’s Counsel also draws the Court’s attention to **Regions Bank v Cecil Fred Hudson III – 2016/CLE/gen/00434 (“Regions Bank”)** where the following pronouncements were made at paragraph 5:

“The purpose of Order 14 is to enable the Plaintiff to obtain Summary Judgment without a trial, if he can prove his claim clearly and the defendant is unable to set up a bona fide defence or raise an issue against the claim which ought to be tried.”

25. Counsel also submits that, a case which the Defendants wish to rely on – **Thomas Roy Holbird Jr (Executor) v Jerry Hamel et al Supreme Court No. 2017/COM/00054** (“*Holbird*”) – is clearly distinguishable to the instant case. Counsel argues that *Holbird* dealt with an *in rem* order made in Georgia, whereas the instant case deals with an *in personam* order made against the Defendants.
26. He contends that *in personam* judgments can be enforced in The Bahamas and relies on the following authorities for that proposition – **Cramlin** and **Regions Bank** (both mentioned above).
27. Counsel asserts that there are six (6) criteria that must be met in order for a foreign judgment to be recognized at common law in The Bahamas. Those criteria are:
- a. the foreign court had competent jurisdiction;
 - b. The rules of natural justice were complied with;
 - c. There was no appeal from the foreign judgment, indicating that the same was final and conclusive;
 - d. The judgment was final definite and ascertainable;
 - e. the foreign judgment was not obtained by fraud; and
 - f. the recognition of the foreign judgment would not be contrary to public policy in The Bahamas.”
28. Counsel concludes by submitting that all of these criteria have been satisfied, thus the Court ought to recognize and enforce the Florida Judgment and award the Claimant costs.

Defendant's Submissions

29. The Defendant's Counsel submits that the Florida Judgment should not be recognized or enforced. Counsel asserts that whether or not a Court can recognize the Florida Judgment is only one part of the question. Counsel asserts that the real question is should the Bahamian Court recognize the Florida Judgment?
30. Counsel cites the case of **Premier Cruise Lines Ltd v Treasure Cay Ltd No. 526 of 1994; [1998] BHS J. No. 86** where Allen J (as she then was) made the following pronouncements:

“The principles governing the requirements of natural justice vis-à-vis the enforcement of foreign judgments and the defence of breach of natural justice were set out in *Pemberton v. Hughes* (1891) 1 Ch. 781 and confirmed by the English Court of Appeal in *Adams v. Cape Industries plc.* (1990) 1 Ch. 433.

At page 566 of the *Adams* case, the court said, “In our view, no significant assistance is derived from this case, (speaking of the case of *Local Government Board v. Arlidge* [1915] A.C. 120) or other decisions upon the requirements of natural justice in administrative law cases, where the requirements of substantial fairness depend upon the subject matter and the context. It is sufficient, in our view, to derive the requirements of natural justice for the purposes of enforcement of a foreign judgment and the special defence thereto of breach of natural justice from the principles stated in *Pemberton v. Hughes* [1891] 1 Ch. 781 and relied upon by Scott, J., namely: did the proceedings in this foreign court offend against our views of substantial justice?”

The notion of substantial justice must be governed in a particular case by the nature of the proceedings under consideration.”

It would appear then that in the case of the enforcement of foreign judgments and by extension, foreign awards, for the defence of breach of natural justice to succeed, the question extends beyond whether there had been a fair hearing, to the question whether the foreign proceedings offended the court's idea of substantial justice.”

31. Counsel further submits that the *Holbird* decision succinctly summarizes the law with respect to the recognition and enforcement of foreign judgments in The Bahamas and that such principles are applicable to the instant case.
32. Counsel argues that *Holbird* involved an application to have certain conveyances over real estate in The Bahamas, which were made pursuant to a Georgian judgment, be declared invalid and, *inter alia*, that a declaration be made declaring such a judgment to be incapable of enforcement in The Bahamas.
33. The Defendants’ Counsel asserts that the central issue that arose in *Holbird* was whether or not the Georgian judgment was a judgment *in personam* or *in rem*. Counsel further asserts that the Court in *Holbird* went through a thorough analysis of the applicable law on the subject.
34. He submits that the Court in *Holbird* focused on **Dicey Morris & Collins 14th Ed. (2006) text, “The Conflict of Laws” (“Dicey”)** which states:

“Rule 40 – (1) A court of foreign country has jurisdiction to give a judgment in rem capable of enforcement or recognition in England of the subject matter of the proceedings wherein that judgment was

given was immovable or moveable property, which was at the time of the proceedings situate in that country, (2) A court of a foreign country has no jurisdiction to adjudicate upon title to, or the right to possession of any immovable situate outside that country.”

35. Counsel then submits that the Property is immovable property within the above meaning.

36. Counsel further contends that the Court in ***Holbird*** went through an extensive discussion on the difference between an action *in rem* and an action *in personam*, ultimately finding that, where a judgment goes beyond the mere determination of rights between two individuals it effectively becomes an action in rem. Counsel draws the Court’s attention to paragraph 48 of ***Holbird***, where the Court opined:

“The Pattni case (supra) is quite clear on what the difference is between a judgement in rem and one in personam. Simply put it was a judicial determination of the existence of rights in or over property or rights against a person. Paragraph 23 further speaks to a judgment in rem as it relates to rule 40 in Dicey, Morris & Collins It says that the determination must be a determination regarding the STATUS OR DISPOSITION OF PROPERTY, which is to be valid as against the whole world. It also goes on to say that the fact that a judicial determination determines or relates to the existence of property rights between parties does not in itself mean that it is in rem. We say that it goes beyond what is required. It is patently clear that the Georgia Judgment is one in rem.”

37. Counsel further cites paragraphs 68, 69 and 73 of ***Holbird*** which read:

“68. The real issue before us as we would have said before is whether the Georgia Judgment was one in personam or in rem.

69. It is clear from what we have said earlier that we have concluded that the Georgia Judgment was one in rem...

73. We say that the instant case is quite similar. As was stated in the Pattni case, we also say that the Georgia Judgment went far beyond declaring that the Respondents in the instant matter were entitled to performance of the terms of the oral agreement between the Applicant and the Respondents herein.”

38. Counsel submits that, upon consideration of the established principles and authorities, the law is clear that the Florida Judgment is incapable of being recognized or enforced in The Bahamas. Counsel asserts that the rules of natural justice have been breached by such a judgment because the Court went beyond its jurisdiction by making such a judgment.

39. He concludes by submitting that the Claimant's application be dismissed as the entire premise is fatally flawed. He asserts that the Court should order that the Property be appraised to determine fair market value and that the debt be assessed. Further, Counsel contends that the Defendants should have first option to buy the Claimant's interest in the Property or vice versa. Should these be unsuccessful, Counsel submits that the Property be sold at fair market value and that the net proceeds of sale be distributed equally among the Parties.

DISCUSSION AND ANALYSIS

Whether the Court ought to order enforcement and recognition of the Florida Judgment and grant Summary Judgment to the Claimant?

40. In order to determine the issue, I must review the law with respect to recognition of foreign judgments and determine whether or not the Florida Judgment is one *in personam* or one *in rem*.

Preliminary Point

41. As I have pointed out to Counsel prior to my decision, these proceedings are governed by the **Supreme Court Civil Procedure Rules, 2022 ("CPR")** and its amendments. This is by virtue of **Practice Direction No. 9 of 2023**, where **paragraphs 2 and 3** provide:

"2. Civil Proceedings commenced prior to the commencement date and a trial date has not been fixed for those proceedings

2.1 The Rules apply to proceedings prior to the commencement date where a trial date has not been fixed for those proceedings.

2.2 ...

2.3 A party may apply to a Judge by Notice, prior to the convening of the CMC required under 2(2)(a) of the Rules, for directions in respect of any proceedings commenced prior to the commencement date where a trial date has not been fixed for those proceedings.

3. Interlocutory applications filed prior to the commencement date but which have not been heard by the Court

3.1 Where the Rules apply to an application which had been filed with the Court prior to the commencement date but not heard by the Court, the Parties will not be required to file new applications and the Court may proceed to determine on the documents already filed with the Court.

3.2 The Court in managing the hearing of the interlocutory application may permit the parties to file any additional material which may be

required for the application to be properly considered where the Rules now apply.”

42. The documents for this application were initially filed in 2019, however no trial date has been set as yet. Accordingly, this application falls within the ambit of the CPR.
43. The Court will not penalize counsel for any reference to the former Supreme Court Rules, but will only reference the CPR in relation to this ruling, where relevant and required.

Judgments in rem vs Judgments in personam

44. Both Counsel rely heavily on ***Holbird*** regarding the relevant principles on whether a foreign judgment is one *in rem* or one *in personam*. I will, therefore, analyze that decision.
45. In ***Holbird***, an application was brought to have conveyances relating to real estate situate in The Bahamas and prepared pursuant to a judgment made in the state of Georgia, one of the states of the United States of America, *inter alia*, set aside on the basis that the Georgian Court lacked jurisdiction to make such an order. The proceedings before the Georgian Court involved an alleged agreement between the parties involving the subject property.
46. There, Thompson J (as he then was) made the following pronouncements:

“43 It would appear that most of what was laid out in the complaint sought to have the Georgia Court determine the alleged agreement between the parties as it relates to the subject land.

44 It is not disputed between the parties that the Georgia Court did not have jurisdiction to grant relief. What is disputed is whether the Georgia Court had jurisdiction to determine title to land which was outside the jurisdiction of the U.S. The pointed question again is whether this was a judgment in rem or in personam. The simple difference between the two is whether the Georgia Court determined title to the subject land or whether it simply determined that there was an agreement between the parties and that the agreement should be specifically performed. In other words, was there a claim for specific performance of an agreement.

45 At this point, it is perhaps necessary to address the actual Judgment of the Georgia Court. The actual wording of the judgment goes beyond determining the performance of an agreement between the parties. The Georgia Court appears to have determined that the Plaintiffs in that matter were entitled to a portion of the subject property pursuant to the agreement. By doing this they went beyond the simple alleged agreement, and subsequently, under pain of

contempt ordered the Applicant to execute conveyances in favour of the Respondents. The subject property is an immoveable property.

46 In the case of RE HOYLES [1911] 1 CH Farwell, L.J. said, at pgs. 185 and 186;

“No country can be expected to allow questions affecting its own land, or the extent and nature OF THE INTERESTS IN ITS OWN LAND (our emphasis) which should be regarded as immoveable, to be determined otherwise than by its own courts in accordance with its own interests.”

47 The Georgia Court undoubtedly determined the extent and nature of interests in the subject property. There is further clarification on this point. LORD MANCE in the case of PATTNI v. ALI and another [2007] 2 A.C. 85 a Privy Council case states at paragraphs 14 – 25;

“14. The proposition advanced by Mr. Haddon-Cave (who appeared for Mr. Ali and Dinky before their Lordship, but not below), and accepted by both courts below, is that the judgment and decree constitute or purport to constitute a judgment in rem incapable of recognition in the Isle of Man under a rule of private international law set out in Dicey, Morris & Collins, The Conflict of Laws, 14th ed. (2006), as follows;

“Rule 40-(1) A court of a foreign country has jurisdiction to give a judgment in rem capable of enforcement or recognition in England if the subject matter of the proceedings wherein that judgment was given was immovable or movable property which was at the time of the proceedings situate in that country. (2) A court of a foreign country has no jurisdiction to adjudicate upon the title to, or the right to possession of, any immovable situate outside that country.”

19. Both Deemster Kerruish and the Staff of Government Division cited well-known texts considering the distinction between judgments in personam and in rem. In the text to rule 22, Dicey, Morris & Collins states, at para 11-002;

“A claim in personam may be defined positively as a claim brought against a person to compel him to do a particular thing, e.g. the payment of a debt or of damages for a breach of contract or for tort, or the specific performance of a contract; or to compel him not to do something, e.g. when an injunction is sought.”

Mr. Pattni submits that a judgment ordering a person to do a particular thing is likewise In personam. In the text to rule 40, Dicey, Morris & Collins states, at para 14-100;

“A judgment in rem is a judgment where under either

1. Possession or property in a thing is adjudged to a person, or

2. the sale of a thing is decreed in satisfaction of a claim; against the thing itself. The term is used also to describe;

3. an adjudication as to status such as a decree of nullity or dissolution or marriage, and

4. a judgment ordering property to be sold by way of administration in bankruptcy or on death... The question whether a foreign judgment is in personam or in rem is sometimes a difficult one on which English judges have been divided in opinion. But unless the foreign judgment claims to operate in rem, it cannot be recognized in English as a judgment in rem."

*97...

21. For present purposes, a judgment in rem in the sense of rule 40 is thus a judgment by a court where the relevant property is situate, adjudicating on its title or disposition as against the whole world (and not merely as between parties or their privies in the litigation before it). The distinction is shortly and accurately put in Stroud's Judicial Dictionary, 7th ed (2006), p 2029, cited (in an earlier edition) by Deemster Kerruish;

"A judgment in personam binds only the parties to the proceedings, as distinguished from one in rem which fixes the status of the matter in litigation once for all, and concludes all persons..."

Jowitt's Dictionary of English Law, 2nd ed (1977), pp 1025–1026, contains fuller definitions to the same effect.

"A judgment in rem is an adjudication pronounced upon the status of some particular subject matter by a tribunal having competent authority for that purpose. Such an adjudication being a solemn declaration from the proper and accredited quarter that the status of the thing adjudicated upon is as declared, it precludes all persons from saying that the status of the thing or person adjudicated upon was not such as declared by the adjudication. Thus, the court having in certain cases a right to condemn goods, its judgment is conclusive against all the world that the goods so condemned were liable to seizure. So, a declaration of legitimacy is in effect a judgment in rem. A judgment of divorce pronounced by a foreign court is in certain cases recognized by English courts, and is then a *98 judgment in rem...Judgments in personam are those which bind only those who are parties or privies to them; as in an ordinary action of contract or tort, where a judgment given against A cannot be binding on B unless he or someone under whom he claims was party to it."

23. In *Cambridge Gas Transportation Corp v. Official Committee of Unsecured Creditors of Navigator Holdings plc* [2007] 1 A.C. 508 the Board touched on the concepts of *in personam* and *in rem* proceedings, but held that the bankruptcy order with which it was concerned fell into neither category, its purpose was simply to establish a mechanism of collective execution against the property of the debtor by creditors whose rights were admitted or established. The board referred, at para 13, to judgments *in rem* and *in personam* as “judicial determinations of the existence of rights: in the one case, rights over property and in the other, rights against a person.” However, their Lordships take the present opportunity to emphasize that in the former case, in order for a judgment to have *in rem* effect in sense of rule 40 in Dicey, Morris & Collins, the determination must be a determination regarding the status or disposition of property which is to be valid as against the whole world. The fact that a judicial determination determines or relates to the existence of property rights between parties does not in itself mean that it is *in rem*.”

62 However, Dicey’s Rule 40 states;

“40 (1) A court of a foreign country has jurisdiction to give a judgment *in rem* capable of enforcement or recognition in England if the subject matter of the proceedings wherein that judgment was given was immovable or moveable property which was at the time of proceedings situate in that country.”

“40. (2) A court of a foreign country has NO JURISDICTION TO ADJUDICATE UPON THE TITLE TO, OR THE RIGHT TO POSSESSION OF ANY IMMOVABLE SITUATE OUTSIDE THAT COUNTRY.”

63 Both 40 (1) and 40 (2) are applicable in that as it relates to 40 (1), the immovable in this case was not situate in Georgia and as to 40 (2), it is patently clear that the Georgia Court had no jurisdiction to order that conveyances be prepared on behalf of Holbird Jr. and executed by him to vest an interest in the Respondents herein. What the Georgia Court did was to adjudicate a right to title and possession of an immovable which was outside of that jurisdiction (emphasis added).”

47. The Court in *Holbird* went through an exhaustive analysis on *in rem* vs *in personam* judgments. The main difference between the two types of judgments is that *in rem* judgments binds the whole world, whereas *in personam* judgments merely binds the parties in the litigation. Ordinarily, the former may only be rendered by a court within the jurisdiction where the real property is situated.

48. Based on an analysis of the judgment made in Georgia, the Bahamian Court in *Holbird* determined that the Georgian judgment went beyond its jurisdiction by

making a ruling regarding proprietary rights/interests in land located in The Bahamas. The Court reasoned that such an adjudication went beyond the private rights of the litigants and sought to bind the whole world. Thus, it ruled that the conveyances were null and void.

49. The Court's conclusion was based on rule 40 of the Dicey Principles (as quoted above) and the wording of the Georgian judgment. I shall, accordingly, apply similar reasoning in my ruling.

50. In the instant case, the operative parts of the Florida Judgment read as follows:

"1. Attorney Richard Torell, III, Esq. whose office address is 1241 Airport Road, Suite H, Destin, Florida 32541, is hereby appointed Special Master for the purpose of advertising the Property for sale, to conduct a sale, and thereafter to sign a certificate of sale of the real and personal Property (known to this Court as "Hardaground").

2. The Plaintiff is instructed to pay the costs of advertising the Property in Florida and in The Bahamas by legal advertisement according to Florida Law, for at least (30) days before the sale, and to sell the Property within ninety (90) days after this order, by public auction, from the Courthouse steps in Ford Walton Beach, Florida, at a time, place and date determined by the Special Master. The sale will be an "as is" sale but for the Partnership's Warranty of Title.

3. The cost of the Special Master and all other costs of this action will be paid by Plaintiff and repaid from the proceeds of the sale.

4. The Property is to be advertised and sold expressly subject to payment by the purchaser of the expenses of the sale, the unpaid taxes, and subject to the execution and recording of a deed conveying the Property from the individual parties to this action, to the purchaser at public sale.

5. The Special Master is instructed to require all bidders to post an amount of at least 5% of the bid for the Property, and to pay the balance in cash by 4:30pm, to the Special Master on the date of the sale.

6. The proceeds of the sale are to be held by the Special Master, in trust, in Okaloosa County, Florida, until the conditions of paragraph four (4) above are met and until counsel for the parties consent to distribution or until further order of this Court.

7. This Court reserves jurisdiction to enter such further orders, upon application of either party, as may be necessary to accomplish the intent of this Court"

51. In my view, the Florida Judgment goes beyond the scope of the Floridian Court's jurisdiction. It is apparent that the Property falls within the definition of

“immovable property” as outlined in rule 40 of the Dicey Principles. To outline the manner in which the Property (being immovable property situate outside of Florida) is to be advertised and sold was essentially to determine propriety rights/interest in the land. This is beyond the permissible scope as permitted under rule 40 of the Dicey Principles. The Florida Court has essentially adjudicated upon land situate in The Bahamas, which, as I understand the law, is not permissible.

52. The extent of the Floridian Court’s jurisdiction was to indeed dissolve the partnership (as the evidence confirms that the partnership was governed by Floridian law and this was not disputed) and order that the assets of the partnership be allocated equally amongst the partners. It, however, is not empowered to make directions as to the transfer and legal ownership of the Property as to allow such would be to determine proprietary rights here in The Bahamas – which will be binding against the world. This, therefore, would be a judgment *in rem*, despite the Floridian Court cautiously attempting not to make such a judgment.
53. I also bear in mind what factors should be considered when determining whether or not a foreign judgment is capable of enforcement and recognition here in The Bahamas at common law. This was explored by Charles J (as she then was) in the **Cramin** decision. The learned judge made the following pronouncements on the subject:

“[45] Judgment from any country to which the Act has not been extended can and must be enforced at common law, as in the present case. The method of such enforcement is the commencement of an action in the Supreme Court by which a party may seek to have recognized or domesticated the order of the foreign court by an order of the Bahamian court. The foreign judgment constitutes a cause of action which can only be opposed on limited grounds.

[46] In Cablevision Systems Development Co. v. Shoupe, No. 1093 of 1984; [1986] BHS J. No. 41, Georges CJ stated at paragraph 7 of his judgment –

“The law in England is stated in Dicey and Morris, 10th Edition, Rule 180 at p. 1035:-

"the judgment of the court of a foreign country (hereinafter referred to as a foreign judgment) has no direct operation in England but may

(1) be enforceable by action or counterclaim at common law, or

(2) be enforceable by statute...”

The law of this Commonwealth is the same.”

Grounds on which a foreign award could be challenged

[47] In an action to enforce a foreign judgment in the Bahamas, six possible defences are available to the Defendant namely:

1. the foreign court lacked competent jurisdiction;

2. the rules of natural justice had not been complied with in the foreign proceedings;

3. the foreign judgment was not final and conclusive;

4. the judgment debt was not definite or ascertainable;

5. the foreign judgment was obtained by fraud; and

6. recognition of the foreign judgment would be contrary to public policy in The Bahamas (emphasis added).”

54. Applying such factors to the instant case, I am of the view that the Floridian Court lacked jurisdiction with respect to the Property and how such interest was to be divested. The extent of its jurisdiction was to the dissolution of the partnership only and not the advertisement or sale of the Property.

55. In relation to the second factor, I believe the rules of natural justice have been complied with as the evidence confirms that the parties did submit to the jurisdiction of the Floridian Court and were represented by counsel at the relevant time of the Floridian action.

56. With respect to the third factor, the Floridian Judgment appears to be final. Again, the evidence confirms that there was no appeal launched by any of the parties at the relevant time. Therefore, the Floridian Judgment is final and conclusive.

57. The fourth nor fifth factors above are relevant to the instant case. The subject matter does not involve a debt nor has there been any allegation of fraud pleaded.

58. In relation to the sixth and final factor, recognition of the Florida Judgment would indeed be contrary to public policy as to allow such recognition would fly in the face of clearly defined and accepted international laws (i.e. rule 40 of the Dicey Principles) and would essentially usurp the authority of the Bahamian Court regarding rights of parties to land situate in The Bahamas. I cannot and will not allow this.

59. It is for this Court to determine any proprietary rights over land here in The Bahamas – not a foreign court of law. On that basis, I rule that the Florida Judgment, to the extent that the judgment adjudicated upon proprietary rights to land and empowered a Special Master to grant legal title of the Property to another, is incapable of recognition and enforcement in The Bahamas.

Summary Judgment

60. **Rule 15.2 of the CPR** addresses circumstances when Summary Judgment may be granted. The rule provides:

“15.2 Grounds for summary judgment.

The Court may give summary judgment on the claim or on a particular issue if it considers that the —

(a) claimant has no real prospect of succeeding on the claim or the issue; or

(b) defendant has no real prospect of successfully defending the claim or the issue”

61. As I have already ruled that the Florida Judgment is incapable of recognition and enforcement, to the extent that the judgment attempts to adjudicate upon proprietary rights of the Property, I am not prepared to grant summary judgment to the Claimant.

CONCLUSION

62. In the premises, I shall grant recognition and enforcement of the Florida Judgment – only to the extent that the partnership is dissolved and that the assets of the partnership be divided evenly amongst the partners. I refuse to grant summary judgment in this matter.

63. My Order shall read as follows:

- (a) Leave is granted to the Claimant for the Florida Judgment to be recognized and enforced to the extent that the partnership is dissolved and that the assets of the partnership be divided evenly amongst the Parties. The aspects of the Florida Judgment relating to advertisement and sale of the Property is incapable of enforcement in The Bahamas.
- (b) Any such transfer of proprietary rights/title to the Property in pursuance of the Florida Judgment prior to this order is hereby null and void.
- (c) The Property is to be appraised by a reputable appraiser, agreed by the Parties, within sixty (60) days of this judgment. The Parties shall equally bear the costs of such appraisal.
- (d) The Property is to be sold within ninety (90) days from the date the appraisal is received. The Claimant shall hold the sale proceeds of the Property in escrow pending completion of the sale of the Property. Payment of any outstanding real property tax along with any costs and/or taxes relating to the sale of the Property and/or any other debts of the partnership shall be attended to prior to distribution of the sale proceeds amongst the Parties – such remaining sale proceeds to be divided equally among the Parties.
- (e) The Parties shall equally bear the costs involved in the sale of the Property.

(f) Each Parties shall pay their own costs for this application

(g) Parties are at liberty to apply to vary this order, if need be.

64. The Parties should seek to have this matter resolved expeditiously and work together amicably in order to do so.

Senior Justice Deborah Fraser

Dated this 14 day of December 2023