ENGLISH COMMERCIAL COURT ENFORCES DIFC COURT JUDGMENT UNDER COMMON LAW RULES

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UK Litigation and Dispute Resolution Alert

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The Commercial Court of the Queen's Bench Division of the High Court of Justice of England and Wales (Commercial Court) has granted an application for summary judgment on a claim to enforce in England a judgment of the DIFC Courts (an English-language common law jurisdiction in the Dubai International Financial Centre (DIFC), United Arab Emirates (UAE)). The case (*Barclays Bank Plc v Shetty* [2022] EWHC 19 (Comm)) is a helpful reminder of the principles the English courts will adopt when asked to enforce a foreign judgment at common law.

The defendant, Dr. Bavaguthu Raghuram Shetty (Dr. Shetty), the founder of a foreign exchange business (UAEEC), had provided a guarantee (Guarantee) by which Dr. Shetty guaranteed the performance by UAEEC of its obligations under certain derivatives contracts with Barclays Bank PLC (Barclays), which were subject to early termination following default by UAEEC. The Guarantee was governed by English law and contained an exclusive jurisdiction clause in favor of the DIFC Courts. A payment demand was made under the Guarantee by Barclays, which Dr. Shetty had failed to satisfy.

Barclays commenced proceedings against Dr. Shetty before the DIFC Court of First Instance (*Barclays Bank PLC v Bavaguthu Raghuram Shetty* [2020] DIFC CFI 061), claiming the monies demanded under the Guarantee. By judgment dated 22 April 2021, Justice Martin granted Barclays' application for immediate judgment (equivalent to summary judgment), finding that “none of the matters raised on behalf of Dr Shetty provide any realistic prospect of a successful defence to Barclays' claim against him, nor any other compelling reason why the case should go to trial.” Justice Martin noted that, following the hearing of the application for immediate judgment, Dr. Shetty had embarked upon “a strategy of seizing upon any point whatsoever, irrespective of its substance, in an attempt to delay the delivery of [his] decision.” The judge further ordered that the worldwide freezing order that Barclays had previously obtained would continue in force, modified to remove the previous exceptions for legal costs and reasonable living expenses.

By judgment dated 4 May 2021, the DIFC Court of First Instance rendered its judgment on quantum, ordering that judgment be entered in the amount of US$131,440,346.22 plus simple interest at the rate of 9% per annum on the outstanding balance until satisfaction of the judgment in full.

In July 2021, Barclays served a Claim Form and Particulars of Claim to enforce the DIFC judgment in England and Wales and subsequently applied for summary judgment. Dr. Shetty made an application for an adjournment of the summary judgment proceedings on the basis that he was a litigant in person and unable to defend the claim without legal representation and advice. He stated that he had been unable to engage any firm to act for him as a result of freezing orders obtained in separate proceedings in India and required an adjournment in order to seek to vary the Indian orders and thereafter obtain legal advice and representation in these proceedings.

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ENFORCEMENT OF DIFC COURT JUDGMENTS AT COMMON LAW

In granting summary judgment in favor of Barclays and dismissing the adjournment application, Mr. Justice Henshaw referred to the principles relevant to the enforcement of DIFC judgments that he had previously summarized in *FH Capital Limited v Haigh and others* [2020] EWHC 1269 (Comm).

Those principles, summarized in the FH Capital case, are as follows:

- There is no treaty dealing with the recognition and enforcement of judgments between the United Kingdom and UAE. As such, judgments of the DIFC Courts can be enforced only at common law.
- At common law, where a foreign court of competent jurisdiction determines that a certain sum is due from one person to another, a legal obligation arises on the debtor to pay that sum, which can be enforced in the courts of England and Wales.
- The Memorandum of Guidance as to enforcement between the DIFC Courts and the Commercial Court includes a helpful summary of the requirements for enforcement of foreign judgments at common law:
  - The judgment of the foreign court must be final and conclusive.
  - The Commercial Court will not enforce certain types of judgments, for example, judgments ordering the payment of taxes, fines, or penalties.
  - The foreign court must have had jurisdiction, according to the English conflict of law rules, to determine the subject matter of the dispute.
- The Commercial Court will generally consider the foreign court to have had the required jurisdiction only where the person against whom the judgment was given qualifies due to any of the following:
  - Was, at the time the proceedings were commenced, present in the jurisdiction; or
  - Was the claimant or counterclaimant in the proceedings; or
  - Submitted to the jurisdiction of the foreign court; or
  - Agreed, before commencement, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the foreign court.
- A foreign court judgment may be challenged in the Commercial Court under the common law regime only on limited grounds. Those grounds include:
  - Where the judgment was obtained by fraud;
  - Where the judgment is contrary to English public policy; and
  - Where the proceedings were conducted in a manner that the Commercial Court regards as contrary to the principles of natural justice.
- The Commercial Court will not re-examine the merits of a DIFC Court judgment. The judgment may not be challenged on the grounds that it contains an error of fact or law.

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- In most cases, a party will be entitled to apply to obtain summary judgment without trial under Part 24 of the Civil Procedure Rules.

In applying the test for granting summary judgment, the Commercial Court found that Dr. Shetty did not have a real prospect of successfully arguing that the requirements for enforcement of the DIFC Court judgment in the United Kingdom had not been met and found that there was no other compelling reason for a trial. Accordingly, the Commercial Court granted Barclays' application for summary judgment and dismissed Dr. Shetty's adjournment application, which the court considered was a deliberate last-minute tactic to seek to delay the proceedings.

COMMENT

The case is a helpful reminder of the availability of summary judgment in proceedings to enforce foreign judgments, such as those of the DIFC Courts, in England and Wales under common law principles and contains a useful summary of the legal tests that the English Commercial Court will adopt when requested to enforce such judgments under the common law regime, including, in particular, the very limited grounds available to challenge the foreign judgment.

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