THE HIGH COURT

COMMERCIAL

[2023] IEHC 630

RECORD NUMBER 2022/6454P

BETWEEN

ARNE VIGELAND

PLAINTIFF

AND

ZURICH INSURANCE PUBLIC LIMITED COMPANY

DEFENDANT

JUDGEMENT OF Mr Justice Twomey delivered on the 14th November, 2023

INTRODUCTION

1. This case involves the question of whether the Irish courts or the Norwegian courts should decide whether the plaintiff ("**Mr. Vigeland**"), a director of an impecunious company SJI Equities Limited ("**SJI Equities**"), should have to pay the costs order which was obtained by the defendant ("**Zurich**") against that company from a Norwegian court.

2. Mr. Vigeland is a Norwegian citizen and is resident in Norway, while Zurich and SJI Equities are both incorporated in Ireland.

3. The costs order in the sum of NK11,349,923.80 (approximately €1 million) arose from unsuccessful litigation pursued by SJI Equities in the Norwegian courts. Zurich is seeking payment of the costs judgment in Norway from Mr Vigeland on the grounds that he wrongfully caused the parent company of SJI Equities, SJ Investments Limited ("**SJ Investments**"), to evade a costs order by transferring that litigation to its impecunious subsidiary, SJI Equities. SJ Investments is registered in Belize and Mr. Vigeland is a director and shareholder of SJ Investments.

4. Uncontroverted submissions were made on behalf of Zurich that the Norwegian Court dealing with the protective order (which was obtained against Mr. Vigeland by Zurich), and the Norwegian Court dealing with the Writ of Summons (issued against Mr. Vigeland), stated that it was probable that Zurich would succeed in making Mr. Vigeland personally liable in Norway for these legal costs.

5. The key question in these proceedings is: when a debtor is seeking in another State (Norway) payment, of a judgment in the name of a company, from a director of that company, does this constitute '*proceedings concerned with the enforcement of judgments'* under the Lugano Convention, so as to grant exclusive jurisdiction to the Norwegian courts for these proceedings.

BACKGROUND

6. The costs order against SJI Equities was made by the Borgarting Court of Appeal on 9 December, 2022 and that judgment was obtained by the Norwegian branch of Zurich.

7. In anticipation of it being successful in obtaining an order against Mr. Vigeland for payment of the costs order in the name of SJI Equities, Zurich sought to ensure that Mr. Vigeland would have the assets to meet any future court order it might obtain in Norway against Mr. Vigeland. Accordingly, Zurich's first step in this litigation was, on 24th February

2023, to apply for, and it duly obtained, a protective order from the Ringerike, Asker and Baerum District Court in Norway, in the form of an arrest order over Mr. Vigeland's assets in the sum of NK12,044,552.30 (just over €1 million).

8. Three days later, on the 27th February, 2023, Mr Vigeland commenced these proceedings in Ireland, in which he seeks a negative declaration i.e. his General Indorsement of Claim seeks a *'declaration that [Mr. Vigeland] is not personally liable for [….] the costs order against SJI Equities in the Norwegian Proceedings'*.

9. On 24th March 2023 Zurich issued a Writ of Summons to the Ringerike, Asker Baerum District Court in Norway seeking to make Mr. Vigeland liable for the costs awarded against SJI Equities. Although on the front page of the Writ, it is stated to be a claim for damages, it is clear from the body of the writ that this is a claim to make Mr Vigeland personally liable for the costs order. It does so on the grounds that the '*real decision maker in SJ Investments and SJI Equities'* was Mr. Vigeland and so it is claimed in this Writ that he is therefore '*liable for Zurich's legal cost claim'* of NOK12,044,552.

10. The issues in dispute in this case fall to be resolved by the *Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters* 2007 OJ L 339/3 21 December 2007 ("**Lugano Convention**").

Under the Lugano Convention a party is sued where it is domiciled

11. The first conclusion to be drawn in this case is that it is clear from Article 2 of the Lugano Convention that Mr. Vigeland is entitled to sue Zurich in Ireland. This is because it is not disputed that Zurich is domiciled in Ireland for the purposes of the Lugano Convention and in this regard Article 2 sets out the default rule regarding the issuing of proceeding as follows:

"1. Subject to the provisions of this Convention, persons domiciled in a State bound by this Convention shall, whatever their nationality, be sued in the courts of that State."

12. While this is the default rule, there are exceptions. Zurich claims that Article 2 is displaced in this instance, so as to entitle the Norwegian courts, rather than the Irish courts to decide, whether Mr. Vigeland should be liable for the costs judgment obtained against SJI Equities. Zurich relies on Article 22.5 (set out below) which provides that '*exclusive jurisdiction, regardless of domicile'* is granted to courts of a State, where a judgment is sought to be enforced. For his part, Mr Vigeland says Article 22.5 does not apply to a situation where an attempt is being made to be make him personally liable on the judgment obtained against SJI Equities.

Which country's court resolves this jurisdictional dispute between the parties?

13. The next issue for consideration is which country's court resolves the question of whether Article 22.5 does in fact displace Article 2 in this instance. In this regard, Articles 25 and 27 of the Lugano Convention state:

"Article 25

Where a court of a State bound by this Convention is seised of a claim which is principally concerned with a matter over which the courts of another State bound by this Convention have exclusive jurisdiction by virtue of Article 22, it shall declare of its own motion that it has no jurisdiction."

Article 27

1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different States bound by this Convention, any court other

than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court."

14. Dealing with Article 27 first, there can be little doubt that the proceedings in Norway and the proceedings in Ireland involve '*the same cause of action and [are] between the same parties'*. This is because the parties are Zurich and Mr Vigeland in both sets of proceedings, and the main issue between the parties, in both proceedings, is whether the costs judgement (against SJI Equities) should be paid by Mr. Vigeland.

15. It is important to note that, as the first set of proceedings between Mr. Vigeland and Zurich (i.e. the arrest order obtained in Norway against Mr. Vigeland on 23rd February, 2023) constitutes *protective* proceedings, and not *substantive* proceedings, this means that when it came to determining which country's court was "*first seised"* of the proceedings between the parties, it is the High Court. This is because the first set of *substantive* proceedings, in time, were the proceedings issued in the High Court on 27th February, 2023. Accordingly on 6th June 2023, in accordance with Article 27, the Ringerike, Asker and Baerum District Court in Norway stayed the proceedings in Norway until such time as there is a determination of jurisdiction.

16. As regards Article 25, it is clear that the High Court '*is seised of a claim'* which seeks to deny that Zurich is entitled to payment in respect of the costs judgment (in the name of SJI Equities) from Mr Vigeland. It is also clear that this claim in the High Court *'is principally concerned with'* whether Zurich is entitled to an order in the Norwegian courts which makes Mr. Vigeland liable for that very same costs judgment.

17. To put it another way, the claim before the High Court is principally concerned with the same subject matter as the court in Norway. Thus, under the terms of Article 25, *if* this is a matter which falls under one of the exceptions (in Article 22), then the court determining this issue, i.e. the High Court, as it is the court '*first seised'* on the proceedings, must declare that it has no jurisdiction.

18. The key question therefore is whether the proceedings before the High Court fall within one of the exceptions in Article 22, which provide that regardless of domicile, a court, other than the court in which the defendant is domiciled, has exclusive jurisdiction.

19. In this instance, the exception we are concerned with is set out in sub-article five of Article 22 and the question for the High Court to determine is whether the proceedings in the High Court fall within the exclusive jurisdiction of the Norwegian courts, on the grounds that they concern the '*enforcement'* of a judgment in Norway of a judgment obtained in a Norwegian court.

Does this case fall within Article 22.5 so as to grant the Norwegian courts jurisdiction?

20. Article 22.5 states:

> "The following courts shall have exclusive jurisdiction, regardless of domicile:
>
> […]
>
> 5. in proceedings concerned with the enforcement of judgments, the courts of the State bound by this Convention in which the judgment has been or is to be enforced."

For the purposes of Article 22.5, it seems clear that the *'courts of the State bound by this Convention in which the judgment has been or is to be enforced'* is a reference to the Norwegian courts in this case. This is because there is no dispute that Zurich wishes to enforce in Norway, the costs judgment, which it obtained in Norway, against Mr. Vigeland.

Is a costs judgment a 'judgment' under Article 22.5?

21. This is not a case involving the more usual form of court judgment, such asfor a contractual debt or damages, but rather it is a judgment obtained in respect of legal costs arising from litigation. In this regard, Article 32 of the Lugano Convention states:

> "For the purposes of this Convention, 'judgment' means any judgment given by a court or tribunal of a State bound by this Convention, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court."

22. It is clear that the costs judgment obtained against SJI Equities amounts to a *'determination of costs or expenses'* and so there can be little doubt that it is a judgment for the purpose of Article 22.5

The proceedings to be considered?

23. As regards the *'proceedings'*, which have to be examined by this Court for the purposes of Article 22.5, to determine whether they are '*concerned with the enforcement of judgments'*, these are the proceedings issued by Mr. Vigeland in the High Court.

24. However, in examining those proceedings, to see what they concern, this Court is not confined to the Statement of Claim and it can look at the rest of Mr. Vigeland's pleadings and affidavit. As noted by Finlay Geoghegan J. in *Volker Spielberg v Rowley & Ors* [2004] IEHC 384 at pg. 8:

> "The final question is how the court is to determine on this application what is the principal subject matter of the proceedings. I have concluded that the court should primarily look at the statement of claim and any other pleadings delivered but may also have regard to the facts set out in the affidavits sworn in the application."

While *Volker* did not involve Article 22.5, but one of the other exceptions in Article 22 (i.e. Article 22.2 which grants exclusive jurisdiction in proceedings regarding the dissolution of

companies to the court where the company has its seat), it seems clear that the foregoing principle is equally applicable to the other exceptions in Article 22. This is because this Court, as was the case in *Volker*, has to determine what is the principal subject matter of the proceedings, before then determining whether they are *'concerned with the enforcement of judgments'*.

25. In this case, on any reading of the General Indorsement of Claim it is about one thing and one thing only, namely whether Mr. Vigeland has to pay the costs judgment obtained against SJI Equities. This is because the General Indorsement of Claim seeks a declaration that Mr. Vigeland is not personally liable in respect of the costs order and also seeks damages arising from Zurich's attempt to make him personally liable. As regards the Statement of Claim, it does not add to the claims made but sets out the history of how the costs judgment arose. Thus, on any consideration of the High Court proceedings issued by Mr. Vigeland, it is clear that they relate to the issue of whether an order should be granted by a court against Mr. Vigeland to pay the costs order.

Are the proceedings 'concerned with the enforcement of judgments'?

26. The issue which occupied most of the hearing, is whether the proceedings are in fact '*concerned with the enforcement of judgments'* for the purposes of Article 22.5, such that the Norwegian courts could be said to have exclusive jurisdiction to deal with the dispute between the parties.

27. It is crystal clear that enforcing against X, a judgement against the person named in the judgment (X), constitutes '*proceedings concerned with the enforcement of a judgment'.* Thus, if the judgment was in Mr. Vigeland's name, enforcing that judgment against him would amount to '*proceedings concerned with the enforcement of a judgment'.*

28. However, the question in this case is whether seeking payment from Y, of a costs judgment, which has been obtained against X, constitutes *'proceedings concerned with the enforcement of a judgment'*.

29. No direct authority was produced to the Court to the effect that seeking such an order would amount to '*proceedings concerned with the enforcement of a judgment'* for the purposes of Article 22.5.

30. Accordingly, this Court had to carefully consider the terms of Article 22.5 in order to determine whether under the terms of the Lugano Convention, seeking a payment from Mr. Vigeland of the costs order obtained against SJI Equities amounts to '*proceedings concerned with the enforcement of a judgment'*. If it does, then the Norwegian courts have exclusive jurisdiction to deal with this issue and the High Court has no role in determining whether Mr. Vigeland has to meet the costs judgment.

31. Before considering this issue, it is relevant to note that the onus is on Zurich to establish that Article 22.5 displaces the default rule in Article 2 (that Zurich be sued in Ireland, where it is domiciled) and that it must discharge this onus on the balance of probabilities. This is clear from the judgment of Cregan J. in *Von Gietz v Edmund de Rothschild [Suisse] SA & Ors* [2023] IEHC 224 at para. [100], where he states:

> "It is clear from the Supreme Court decision in *Handbridge Ltd v British Aerospace Communications Ltd* [1993] 3 IR 342, that where a Plaintiff seeks to invoke one of the derogations from the principle in the Brussels Convention the onus is on the Plaintiff, unequivocally to show that his claim fell within the scope of the derogation relied upon. A similar principle clearly applies under the Lugano Convention. This standard is the balance of probabilities."

As regards the key question of whether the proceedings in this case are *'concerned with the enforcement of judgments'*, one case that was relied on by both parties was the decision of the

ECJ in *C-261/90 Reichert v Dresdner Bank* ECLI:EU:C:1992:149. That judgment considered an earlier, but identical iteration of Article 22.5.

32. Since Article 22.5 is concerned solely with the enforcement of judgments, it is important to note that in *Reichert,* the ECJ did not have to consider a situation where a judgment was purportedly being enforced, as in Mr. Vigeland's case. This is because there was no judgment in *Reichert,* since it concerned steps being taken to pave the way for a future judgment. Accordingly, the finding in *Reichert,* that those proceedings did not amount to the enforcement of a judgment is not of direct assistance to Mr. Vigeland in his claim that his proceedings are not concerned with the enforcement of a judgment. However, what is of direct relevance, are the court's comments at [25] *et al,* on interpreting Article 16 (the earlier iteration of Article 22.5):

> "25. In the second place it should be pointed out that Article 16 must not be given a wider interpretation than is required by its objective, since it results in depriving the parties of the choice of forum which would otherwise be theirs and, in certain cases, in their being brought before a court which is not that of the domicile of any of them (judgments in Cases73/77 Sanders v van der Putte [1977] ECR 2383, at paragraphs 17 and 18, and C-115/88 Reichert, cited above, at paragraph 9)
>
> 26. From that point of view it is necessary to take account of the fact that the essential purpose of the exclusive jurisdiction of the courts of the place in which the judgment has been or is to be enforced is that **it is only for the courts of the Member State on whose territory enforcement is sought to apply the rules** concerning the action on that territory of the authorities responsible for enforcement." (Emphasis added)

Thus, it is clear that this Court must interpret the words ('*concerned with the enforcement of judgments')* no wider than is required by the objective of Article 22.5. As is clear from the foregoing, the objective, which one has to take account of, is the fact that, when it comes to

enforcing judgments, it is '*only'* for the courts where a judgment is to be enforced (in this case, Norwegian courts).

33. For his part, Mr Vigeland argues in his written submissions that the High Court proceedings are '*concerned with'* attempts to make him personally liable for the costs order and that they are not *'primarily concerned with'* the enforcement of a judgment.

34. However, it seems to this Court that on a plain reading of Article 22.5 (and so, not on a reading that is wider than required by its objective), the proceedings are in fact the *enforcement* of a costs order, *albeit* that they involve its enforcement, *not* against the party the subject of the judgment/order, but against a different party, Mr. Vigeland.

35. In fact the *Reichert* case highlights this distinction, in the sense that it is an example of proceedings which were *not concerned* with the enforcement of a judgment, for the simple reason that there was in fact no judgment to enforce on the part of Dresdner Bank. In that case, the CJEU held that Dresdner Bank's proceedings in France (an '*action paulienne'*) challenging a property transfer on the basis that it was a fraudulent disposition did not constitute *'proceedings concerned with the enforcement of judgments'*. This was because those proceedings were in the nature of a protective measure on the part of a debtor. Accordingly, they did not fall within the strict interpretation given to the '*enforcement of judgments'*.

36. In contrast, in this case, one is *not* concerned with a protective measure on the part of Zurich or any other party. Rather, there is a judgment to enforce and in line with the plain meaning of Article 22.5, it is sought to be *enforced* against a party, *albeit* a party other than the party the subject of the judgment.

37. While not determinative of this Court's decision, it is nonetheless to be noted that Article 22.5, in dealing with the *'enforcement'* of judgments does not restrict itself to the enforcement against the original parties the subject matter of the judgment.

38. Reference was also made by both parties to the English Court of Appeal decision in *Masri v Consolidated Contractors International Company SAL & Ors* [2008] EWCA Civ 303, in which it was held that the expression '*concerned with the enforcement of judgments'* in Article 22.5 did not extend to an order appointing a receiver by way of equitable execution or a freezing injunction restraining a party from dealing with its right to a business. Collins L.J. held at para [123] that:

> "I am satisfied that neither the receivership order nor the freezing order is within article 22(5). First, it seems to me clear from *Reichert* that article 22(5) is concerned with actual enforcement, and not with steps which may lead to enforcement. I do not accept that the receivership order dispossesses the judgment debtor, nor does it amount to a recourse to force. It is plain from the context of the Jenard Report and the *Reichert* decision that what is contemplated is actual execution."

In contrast to the situation in *Masri,* it seems to this Court that in this case, one is dealing with *'actual execution'* (*albeit* against Mr. Vinegald and not SJI Equities) and that one is not dealing with steps which may lead to enforcement, as in *Masri*. Accordingly, it seems to this Court that *Masri* also supports the conclusion that Art 22.5 does in fact apply to the proceedings in this case and that Mr. Vinegald's proceedings in Ireland are concerned with the enforcement of a judgment.

39. Mr Vigeland also relied on the reference in *Reichert* to the *Report on the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters* by Paul Jenard [Official Journal 1979 C 59] which states, in Section 5:

> "What meaning is to be given to the expression 'proceedings concerned with the enforcement of judgments'?

> It means those proceedings which can arise from 'recourse to force, constraint or distraint on movable or immovable property in order to ensure the effective implementation of judgments and authentic instruments'."

However, firstly, it is relevant to note that this was relied upon in *Reichert* to conclude that an *'action paulienne',* where there was no judgment, did not amount to '*proceedings concerned with the enforcement of judgments'* for the purposes of Article 22.5. Secondly, in his written submissions, Mr. Vigeland goes on to conclude, in reliance on the Jenard Report, that Article 22.5 does not apply, as

> "'the question of whether or not [Mr Vigeland] can be made liable for a costs order which was not made against him, also does not relate to *'recourse to force, constraint or distrain'* and **does '*not concern per se the enforcement of judgments*"**' (Emphasis added)

However, it seems to this Court that that the proceedings in this case are in fact concerned with the enforcement of judgments *per se*, *albeit* against Mr. Vigelgand, rather than against SJI Equities and so his reliance in this context on the Jenard Report does not assist him.

40. In summary therefore, on a plain and restrictive interpretation of Article 22.5, it is this Court's view that the High Court proceedings are concerned with the enforcement of a judgment. To put it another way, the proceedings are concerned with Zurich getting paid the costs order it has obtained from the Norwegian court and is seeking that payment from Mr. Vigeland and so is seeking to 'enforce' the judgment against him. These proceedings are not seeking to 'pave the way' for a future judgment that might be obtained against Mr Vigeland, but rather they are seeking to enforce a judgment that has already been obtained, in the name of SJI Equities, against him.While this Court has determined the issue between the parties on a plain and restrictive interpretation of Article 22.5, it is nonetheless worth observing that

there are very good reasons why the enforcement of Norwegian judgments is an exclusive matter for the Norwegian courts (and indeed, why the enforcement of Irish judgments is an exclusive matter for the Irish courts). It is because those courts, familiar with the relevant legal principles, are best placed to adjudicate on these legal issues, which can be complex. Thus, it was noted in *Case C-560/16 E.ON Czech Holding AG v Michael Dedouch & Ors* EU:C:2018:167 at para. [30], that:

> " In particular, the rules of exclusive jurisdiction laid down in Article 22 of Regulation No 44/2001 seek to ensure that **jurisdiction rests with courts closely linked to the proceedings in fact and law** (see, with regard to Article 16 of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32), the provisions of which are essentially identical to those of Article 22 of Regulation No 44/2001, judgment of 13 July 2006, GAT, C-4/03, EU:C:2006:457, paragraph 21), in other words, to confer exclusive jurisdiction on the courts of a Member State in specific circumstances where, having regard to the matter at issue, **those courts are best placed to adjudicate upon the disputes falling to them by reason of a particularly close link between those disputes and that Member State** (judgment of 12 May 2011, BVG, C-144/10, EU:C:2011:300 paragraph 36)". (Emphasis added)

While these comments were made in the context of Article 22 of the Brussels Regulation and in particular to Article 22.2 (which grants exclusive jurisdiction in proceedings regarding the dissolution of companies to the court where the company has its seat), they are obviously of general application (since they refer to the *'rules of exclusive jurisdiction*'). It seems clear that the same point, regarding the close link between the nature of the dispute and the State, is just as applicable to the enforcement of judgments exception under the Lugano Convention.

Thus, there are very good reasons why the Norwegian courts are regarded as best placed to consider the enforcement in Norway of judgments obtained from Norwegian courts. In this instance, a strict interpretation by this Court of Article 22.5 supports the conclusion that the question of whether Mr. Vigeland has to meet the costs judgement in the name of SJI Equities, is a matter for the exclusive jurisdiction of the Norwegian courts. This also happens to be consistent with views expressed in *E.ON Czech* that the courts of Norway, as the jurisdiction most closely linked to the proceedings in fact and law, are best placed to adjudicate upon that issue, by reason of a particularly close link between the enforcement of a Norwegian costs judgment and Norwegian courts.

44. For the foregoing reasons, this Court has concluded that, for the purposes of Article 22.5, the proceedings issued by Mr. Vigeland are '*concerned with the enforcement'* of a judgment which *'is to be enforced'* in Norway. Accordingly, these proceedings are a matter for the exclusive jurisdiction of the Norwegian courts. Therefore, pursuant to Article 25, this Court must declare that it has no jurisdiction to deal with these proceedings and therefore the proceedings must be struck out on the grounds of lack of jurisdiction.

45. In these circumstances, this Court orders the parties to engage with each other to see if agreement can be reached regarding all outstanding matters without the need for further court time, with the terms of any draft court order to be provided to the Registrar. In case it is necessary for this Court to deal with final orders, this case will be provisionally put in for mention, a week from the delivery of this judgment at 10.45 am (with liberty to the parties to notify the Registrar, in the event of such listing being unnecessary).