
CANADA / JUDGMENT

Capital One, National Association v. Solehdin

2020 BCCA 182

COURT

British Columbia Court of Appeal

DECIDED

30 June 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCCA 182 Capital One, National Association v. Solehdin

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Capital One, National Association v. Solehdin,

2020 BCCA 182

Date: 20200630

Docket: CA46434

Between:

Capital One, National Association,

formerly known as Hibernia National Bank

Respondent

(Plaintiff)

And

Nizar Solehdin and Yasmeen Solehdin

Appellants

(Defendants)

Before:

The Honourable Mr. Justice Harris

The Honourable Madam Justice Fenlon

The Honourable Madam Justice DeWitt-Van Oosten

On appeal from: An order of the Supreme Court of British Columbia,
dated September 20, 2019 (Capital One, National Association v. Solehdin,
2019 BCSC 1593, Vancouver Docket L-180183).

Counsel for the Appellant

(via videoconference):

C. Ferris, Q.C.

T. Boyd

Counsel for the Respondents

(via videoconference):

R. Wu

E.M. Hatch

Place and Date of Hearing:

Vancouver, British Columbia

June 15, 2020

Place and Date of Judgment:

Vancouver, British Columbia

June 30, 2020

Written Reasons by:

The Honourable Mr. Justice Harris

Concurred in by:

The Honourable Madam Justice Fenlon

The Honourable Madam Justice DeWitt-Van Oosten

Summary:

The appellants appeal from an order dismissing their application to set aside the registration of an Ontario judgment in British Columbia under the Enforcement of Canadian Judgments and Decrees Act, S.B.C. 2003, c. 29 [ECJDA]. The appellants argue that SMS, the party who filed the requisition to register the judgment in British Columbia, was not an assignee of the Ontario judgment and was not an "enforcing party" under the ECJDA because the Ontario judgment had been stayed pursuant to the Ontario Rules of Civil Procedure. Held: Appeal dismissed. SMS was

an assignee of the Ontario judgment. The chambers judge did not err in his interpretation of the agreements through which the judgment was assigned. While it is not clear from the text of the ECJDA that only an "enforcing party" can register a Canadian judgment, SMS was an enforcing party and was clearly entitled to register the judgment on that basis. The Ontario Rule required SMS to complete an administrative step before enforcing the judgment in Ontario; it did not affect their substantive rights and did not prevent them from registering the judgment in British Columbia.

Reasons for Judgment of the Honourable Mr. Justice Harris:

Introduction

- [1] This appeal concerns whether the registrar erred by certifying in British Columbia an Ontario judgment against the appellants pursuant to the Enforcement of Canadian Judgments and Decrees Act, S.B.C. 2003, c. 29 [ECJDA].
- [2] Capital One, National Association ("CONA") was the successful plaintiff and original judgment creditor under the Ontario judgment. After obtaining the Ontario judgment, CONA sold assets to SMS Financial CAP ("SMS"). CONA and SMS intended, although this may be contentious, that the Ontario judgment would be assigned to SMS as a part of the asset sale. SMS, asserting its rights as an assignee of the Ontario judgment, filed a certified copy of the Ontario judgment with the registry in British Columbia. The registrar certified the judgment and issued a certificate of judgment. SMS then relied on the certificate of judgment to register a charge against the appellants' real property in British Columbia.
- [3] The appellants sought relief in the Supreme Court of British Columbia by filing a notice of appeal from the certificate of judgment, and by filing a notice of application to have the certificate of judgment set aside. The appellants argued that the contractual arrangements by which CONA sold assets to SMS did not assign the Ontario judgment to SMS, and that SMS was not a proper party to apply for registration of the Ontario judgment in British Columbia. The chambers judge upheld the certificate of judgment. He interpreted the contracts between CONA and SMS and found that SMS was an assignee of the Ontario judgment obtained by CONA against the appellants. He also held that the registrar had jurisdiction to register the Ontario judgment on SMS' requisition.
- [4] Two specific issues arise for consideration on appeal. First, did the chambers judge err in finding that the contractual arrangements through which CONA sold its assets to SMS effectively assigned the Ontario judgment to SMS? Second, at the date of registration, did the registrar have jurisdiction to act on SMS' requisition and register the Ontario judgment in British Columbia despite the fact that the Ontario judgment was temporarily stayed by R. 11.01 of the Ontario Rules of Civil Procedure, R.R.O. 1990, Reg. 194?
- [5] At the outset, I acknowledge the position of the respondent that the appellants have challenged the wrong decision. It says any challenge should be to the registration of the Ontario judgment in British Columbia on June 4, 2018 and not the certificate of judgment

dated June 8, 2018. Its contention is that the certificate of judgment does not have any legal effect other than to certify the existence and amount of the judgment registered in the court. Moreover, it contends that the certificate of judgment is not an order or decision of the registrar capable of being appealed, and nor is the mere registration of a Canadian judgment.

- [6] The judge declined to address this argument in light of his conclusions on other issues. It may be that there is a serious question about the proper decision that should be challenged and how. I propose to leave that question to a case in which the answer may be determinative and where the Court has the benefit of a reasoned decision on appeal.

Background

- [7] In 2007 and 2008, CONA obtained judgments against the appellants in Louisiana. The judgments arose from guarantees given by the appellants.
- [8] On March 2, 2010, CONA obtained judgment against the appellants in the Ontario Superior Court based on the Louisiana judgments: *Stern et. al. v. Solehdin*, 2010 ONSC 1012. The Ontario Court of Appeal dismissed the appellants' appeal to that court: *Stern Estate v. Solehdin*, 2011 ONCA 286. The Supreme Court of Canada denied leave to appeal.
- [9] In 2013, CONA sold assets to SMS by way of an Asset Purchase Agreement ("APA"). On September 9, 2013, CONA and SMS entered into a "General Assignment and Assumption" agreement (the "General Assignment").
- [10] In May 2017, SMS started an action in British Columbia seeking recognition and enforcement of the Louisiana judgments. That action has not been pursued in its original form. It was overtaken by SMS, as assignee, taking the steps that form the substratum of this appeal. The judge concluded, however, that the appellants were put on notice of the assignment by this action.
- [11] On June 4, 2018, SMS filed a requisition with the Vancouver registry to register CONA's Ontario judgment against the appellants as a judgment of the British Columbia Supreme Court. The registrar issued a Vancouver Registry action number and registered the certified true copy of the Ontario judgment. On June 8, 2018, the registrar issued a certificate of judgment certifying that CONA had obtained the judgment in March 2010, and setting out CONA's rights as judgment creditor.
- [12] After the Ontario judgment was registered in British Columbia, SMS became aware that the appellants were contending that SMS was not an assignee of the Ontario judgment and had no standing to take steps in British Columbia based on the Ontario judgment. Accordingly, SMS and CONA took steps to address the appellants' arguments. First, on February 11, 2019, CONA and SMS entered into a further assignment agreement specifically confirming the assignment of the Ontario judgment to SMS. Second, on March 5, 2019, SMS obtained an order in the Ontario proceeding granting it leave to continue the proceeding in its own name

in place of CONA.

Chambers Judgment

- [13] The appellants appealed the certificate of June 8, 2018. They argued that SMS was not authorized by assignment to take steps in CONA's name to register or enforce the Ontario judgment. The appellants also applied to set the certificate aside and to stay execution on the certificate, arguing that even if SMS was an assignee of CONA's rights under the Ontario judgment, SMS did not have standing in June 2018 to apply to register and enforce the judgment in British Columbia owing to a requirement under Ontario's Rules of Civil Procedure, the effect of which is said to stay the Ontario proceedings until a continuation order is made.
- [14] In reasons indexed as 2019 BCSC 1593, the judge rejected both of these contentions.
- [15] The judge concluded that SMS was authorized by assignment to take steps in CONA's name to pursue payment of the Ontario judgment in June 2018. He addressed the issue as a "question of contractual construction" using "sound commercial principles and good business sense": para. 14. SMS relied on the APA and the General Assignment, but, in the judge's view, the General Assignment was most important.
- [16] The judge noted that the APA and the General Assignment share common definitions. The APA provides for the purchase by SMS of "Assets" described as "a certain portfolio of Notes (as hereinafter defined) and Judgments (as hereinafter defined)."
- [17] "Judgments" is a defined term common to both the APA and the General Assignment. It means "those certain judgments entered into by any applicable Court, as more particularly described on Schedule 2, including, without limitation, any related deficiency claim or judgment in respect thereto." Schedule 2 expressly lists the Louisiana judgments, but not the Ontario judgment.
- [18] "Notes" is defined as "all underlying documentation in respect to certain obligations owed to Seller as well as Claims and all Collections arising therefrom, including the Loan Documents, as more particularly described on Schedule 1." Schedule 1 does not reference the claims against the defendants.
- [19] The appellants accepted that the Louisiana judgments were "assets" transferred to SMS in the APA, but contended that the Ontario judgment was not an asset as defined by the APA.
- [20] The judge's rejection of the appellants' argument turned critically on his interpretation of language used in the General Assignment. Quoting the critical portion of the General Assignment, the judge said:
- [21] The General Assignment defines CONA as the Assignor and SMS as the Assignee. It contains the following words of assignment:

Assignor has granted, bargained, sold, assigned, transferred and set over without recourse, and by these presents does grant, bargain, sell assign, transfer and set over unto Assignee: the Judgments and Notes referenced in Schedule A (the "the Assets") and all of the Assignor's rights, title and interests in, to and under the Assets, and all of Assignor's rights, title and interests in, to and under the instruments, documents, certificates, letters, records and papers relating to the Assets and all other documents executed and/or delivered in connection with the Assets including, without limitation, all of Assignor's rights, tile and interests in any cause of action, , all rights and benefits of Assignor related to the Assets , all supporting obligations related to the Assets , and all claims and choses in action related to the Assets and such instruments, documents, certificates, letters, records and papers, and all of Assignor's rights, title and interests in, to and under such claims and choses in action,

[Emphasis added by the chambers judge.]

- [21] The judge reasoned that the "evident purpose of this comprehensive language is to cover all the bases and ensure that SMS obtains all the rights associated with the Assets SMS purchased from CONA": para. 22. He concluded that the Ontario judgment is a "supporting obligation related to the Louisiana judgments and a chose in action related to the Louisiana judgments": para. 23. Therefore, the Ontario judgment was assigned to SMS. Further, the appellants were on notice of SMS' status as an assignee by the abandoned notice of civil claim. The requirements of s. 36 of the Law and Equity Act, R.S.B.C. 1996, c. 253 were satisfied and SMS was entitled to assert all legal or other remedies for the debt or chose in action.
- [22] Turning to the second issue, the judge concluded that SMS was a proper party to register the Ontario judgment. In short, the judge concluded that SMS was an "enforcing party" as that term is defined in the ECJDA and, on that basis, was entitled to take steps toward registration of the Ontario judgment in British Columbia. The judge did accept that as a result of the Ontario Rule, SMS should have obtained an order continuing the proceedings in Ontario before registering the judgment in British Columbia. The judge also concluded that any defects in the registration were minor procedural issues that were cured and should not result in quashing the registration. As I will explain in further detail when I address the arguments on appeal, there is some disagreement between the parties as to how this Court should understand the chambers judge's reasons.

On Appeal

- [23] First, the appellants argue that the judge committed an extricable error of law in interpreting the General Assignment and failed to consider material evidence relevant to the disposition of the matter before him.
- [24] The appellants rightly concede that contractual interpretation generally involves questions of mixed fact and law on which appellate courts defer, in the absence of palpable and overriding error. Extricable errors of law are different, however, and must be assessed on a

standard of correctness. None of this is contentious. Nor is the instruction from the Supreme Court of Canada that appellate courts should not strive mightily to characterize alleged errors as raising extricable errors of law. To the contrary, courts should be slow to do so, and should recognize that "[t]he motivations for counsel to strategically frame a mixed question as a legal question are transparent": *Teal Cedar Products Ltd. v. British Columbia*, 2017 SCC 32 at para. 45; *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at para. 54.

- [25] Here the appellants contend that the judge focused exclusively on interpreting the documents in accordance with sound commercial principles and good business sense, rather than interpreting them in light of all the applicable principles. Those principles were recently summarized by this Court in *Canaccord Genuity Corp. v. Reservoir Minerals Inc.*, 2019 BCCA 278:
- [19] The basic process for contractual interpretation was outlined by the Supreme Court of Canada in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53:
- [47] The overriding concern is to determine "the intent of the parties and the scope of their understanding". To do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract. Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning .
- [48] The meaning of words is often derived from a number of contextual factors, including the purpose of the agreement and the nature of the relationship created by the agreement.
- [57] While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement. The goal of examining such evidence is to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract. While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement.
- [Citations omitted.]
- [20] The chambers judge recognized the principles of contractual interpretation, quoting, at para. 37 of his judgment, from *RBC Dominion Securities Inc. v. Crew Gold Corporation*, 2016 ONSC 5529, *aff'd* 2017 ONCA 648 at para. 52:
- (1) When interpreting a contract, the court aims to determine the intentions of the parties in accordance with the language used in the written document and presumes that the parties have intended what they have said.

- (2) The court construes the contract as a whole, in a manner that gives meaning to all of its terms, and avoids an interpretation that would render one or more of its terms ineffective.
 - (3) In interpreting the contract, the court may have regard to the objective evidence of the "factual matrix" or context underlying the negotiation of the contract, but not the subjective evidence of the intention of the parties.
 - (4) The court should interpret the contract so as to accord with sound commercial principles and good business sense, and avoid commercial absurdity.
 - (5) If the court finds that the contract is ambiguous, it may then resort to extrinsic evidence to clear up the ambiguity.
 - (6) While the factual matrix can be used to clarify the intention of the parties, it cannot be used to contradict that intention or create an ambiguity where one did not previously exist.
- [21] The interpretation of a contract (apart from contracts that use widely-employed standard language clauses) is a question of mixed fact and law, on which a trial judge is entitled to deference (Sattva at para. 50). Nonetheless, when a trial judge interprets a contract in a manner that cannot be supported on its plain language, the error will be corrected on appeal.
- [26] The appellants contend that the judge allowed his consideration of what may make business sense to overwhelm the actual text of the agreement. They say that the parties identified what judgments the agreements would relate to through their definition of certain "Judgments" which did not include the Ontario judgment. They say that the language was intended to limit the judgments captured by the assignment to those defined in the agreement. By focusing on the general inclusive wording and the imputed purpose of the General Assignment, the judge rendered the parties' chosen definition ineffective.
- [27] The appellants go on to contend that the judge did not consider whether the phrases such as "supporting obligation" or "chose in action" could, in their ordinary meaning, include the Ontario judgment. They say that by excluding the Ontario judgment from the definition of "Judgments" the parties signalled their intent to exclude it from the agreement.
- [28] With respect, I am unable to give effect to this argument. In my view, the appellants are engaged in exactly the type of attempt warned against by the Supreme Court of Canada to create an extricable error of law out of what is clearly an issue of mixed fact and law.
- [29] I do not accept that the judge lost sight of the principles of contractual interpretation. He understood that his task was to identify the objective intention of the parties at the time they entered the contract. It is clear that the judge reviewed the contractual documents as a whole. He made reference to the definitions and schedules. He identified the purpose of the General Assignment and was entitled to conclude that its purpose was to ensure that SMS obtained all of the rights associated with the assets it purchased (which included the Ontario judgment).

- [30] In my view, the judge was entitled to interpret the contractual arrangements in light of the factual matrix. The judge analysed the language of the documents, including particularly the General Assignment. The language the judge excerpted has the effect of assigning all of the rights related or connected to the defined judgments. It is intended to be comprehensive and complete. I do not share the view, contended for by the appellants, that the judge erred by allowing a "basket clause" to overtake the specific intentions of the parties. The appellants argue that the specific list of Notes and Judgments became meaningless when the judge incorporated a judgment outside of the specific list into the agreement through the more general provisions. In my opinion, this argument misses the point.
- [31] The clause in the General Assignment relied on by the judge is not a "basket clause" as that term is used by the appellants. The judge did not purport to use the General Assignment to capture all judgments that the parties may have intended to transfer but forgotten to specifically articulate in the agreement. Instead, the judge observed that the point of the language used in the General Assignment was to express a specific intention that all rights related to the listed judgments would be transferred along with those judgments. As the judge viewed the contract, the language used in the General Assignment was intended to avoid precisely the kind of absurd result the appellants contend for, whereby the same enforceable judgment debt would be assigned to SMS in one jurisdiction (Louisiana) but kept by CONA in another (Ontario).
- [32] To the extent that the judge resolved any uncertainties or ambiguities in the language to avoid commercial absurdity, he was entitled to do so. It would have been an absurdity to suppose that CONA intended to assign the Louisiana judgments, but not the Ontario judgment, when both judgments relate to the same underlying obligations and the appellants could only be liable to pay once and not twice. In my view, this is true of the circumstances that existed at the time the agreement was made. It is not a case of assessing sound commercial principles from the perspective of 2020 and reading them back into a document created years earlier. More specifically, I agree with the respondent's argument that whether the Ontario judgment was itself in the specific contemplation of the parties is irrelevant. What matters was the objective intention to transfer all rights related or connected to the Louisiana judgments, whatever they were.
- [33] I am also unable to accept that we can interfere with the judge's conclusion, in the light of the contractual arrangements as a whole, that the Ontario judgment was a "supporting obligation" and/or a "chase in action related to" the Louisiana judgments.
- [34] Further, I observe that the definition of "Judgments" (which includes the Louisiana judgments) is not exclusive. It includes, "without limitation", "any related deficiency claim or judgment in respect thereto." It is by no means obvious that this language is not sufficiently broad to capture the Ontario judgment as a judgment in respect to the Louisiana judgments, quite apart from the scope of the interpretation of the language in the General Assignment referred to above. The ambiguity in the phrase, which I acknowledge may limit "judgment" to a deficiency judgment, may properly be resolved by reference to the factual matrix.

- [35] In the context of the agreements as a whole, the judge's conclusion that the Ontario judgment is a "supporting obligation related to the Louisiana judgments and a chose in action related to the Louisiana judgments" involves a finding of mixed fact and law, does not involve a palpable error, and is entitled to deference.
- [36] I would not accede to the first ground of appeal.
- [37] The second issue concerns whether the Ontario judgment was incorrectly registered as a British Columbia judgment because SMS lacked standing to register the judgment.
- [38] No issue is taken with SMS' compliance with the procedural steps required for registration of a Canadian judgment pursuant to s. 3 of the ECJDA. A certified copy of the Ontario judgment was filed along with a requisition to the registrar in Form 17 and the prescribed fee was paid. The registry issued a Vancouver Registry action number (L-180183). On June 4, 2018, the registrar stamped the certified copy of the Ontario judgment with the British Columbia action number, and on June 8, 2018, the registrar issued a certificate of judgment. The certificate of judgment shows CONA, not SMS, as the judgment creditor because CONA is the named judgment creditor in the Ontario judgment. The certified copy of the Ontario judgment and the British Columbia certificate of judgment both set out CONA's rights, but those rights have been assigned to SMS.
- [39] The appellants argue that SMS did not have capacity to register the judgment in British Columbia and, therefore, the registrar's registration of the Ontario judgment was without jurisdiction and is a nullity. The logic of the appellants' argument is as follows.
- [40] First, they say, in order to have legal capacity to register the Ontario judgment in British Columbia, SMS had to be an "enforcing party" of the Ontario judgment. "Enforcing party" is defined in s. 1 of the ECJDA for Canadian judgments other than domestic trade agreement awards as: "a person entitled to enforce the Canadian judgment in the province or territory of Canada where the Canadian judgment was made."
- [41] Next, the appellants say that SMS was not an "enforcing party" of the Ontario judgment because the Ontario proceedings were, at the time of registration in British Columbia, stayed pursuant to R. 11.01 of the Ontario Rules of Civil Procedure. That rule says:
- 11.01 Where at any stage of a proceeding the interest or liability of a party is transferred or transmitted to another person by assignment, bankruptcy, death or other means, the proceeding shall be stayed with respect to the party whose interest or liability has been transferred or transmitted until an order to continue the proceeding by or against the other person has been obtained.
- [42] At the time of registration, on June 4, 2018, SMS had not yet obtained an order to continue in Ontario. The appellants say SMS was not an enforcing party at the time of registration because the proceedings were stayed and therefore the British Columbia court had no jurisdiction to register the Ontario judgment.

- [43] The appellants' argument on appeal is essentially the same argument they made below. There is some dispute between the parties on appeal as to how the chambers judge's reasons on this point should be understood. The appellants say that the heart of the judge's reasoning was that SMS did not, at the time of registration, have legal standing to register the judgment, but that this was a curable defect. They say the judge's error was in curing a defect that went to jurisdiction. The appellants rely on a number of cases in support of their proposition that "an action commenced by a party without the legal ability to do so is a nullity." The respondent says that the reasons should be understood as saying that SMS did have standing to register and therefore that there was no defect to be cured. In my view, elements of both lines of reasoning are apparent in the judge's reasons, which are best understood as saying that SMS had legal capacity to register the judgment in British Columbia and, alternatively, any defect in SMS' legal capacity to register was curable and cured.
- [44] My judgment rests on the first point, and I need not engage any further with the precise analytic steps employed by the judge. Nothing prevented SMS from filing a requisition for registration of the Ontario judgment in British Columbia, and the registrar acted fully within jurisdiction when registering the judgment. The judge correctly dismissed the appellants' application.
- [45] I begin by noting that the appellants' assumption, apparently accepted by the chambers judge, that only an "enforcing party" has the legal capacity to file a requisition to register a foreign Canadian judgment under the ECJDA is not rooted in the legislative text or in any related jurisprudence we have been referred to. Section 2 of the ECJDA says:
- 2 (1) Subject to subsection (2), a Canadian judgment, whether or not the Canadian judgment is final, may be registered under this Act for the purpose of enforcement.
- (2) A Canadian judgment that requires a person to pay money may not be registered under this Act for the purpose of enforcement unless it is a final judgment.
- (3) A Canadian judgment that also contains provisions for relief that may not be enforced under this Act may be registered under this Act except in respect of those provisions.
- [46] Nowhere does s. 2, or any other provision in the ECJDA, expressly set out any specific limited class of persons who are entitled to file for registration of a judgment. There is no express statutory stipulation of a standing to register requirement. Section 2 does not say that the party registering the judgment must be the "enforcing party".
- [47] Section 3 sets out the procedural steps required for registration to be effected, but says nothing about who is or is not entitled to take those steps. Obviously, persons who fall within the definition of "enforcing party" are entitled to file a requisition to register a Canadian judgment, but the legislation does not expressly support the conclusion that enforcing parties are the only persons entitled to do so. The plain text of the legislation simply says that an out-of-province Canadian judgment will have the effect of a British Columbia

judgment upon filing of a certified copy of the Canadian judgment; it does not expressly set out a "standing" requirement with respect to who is entitled to perform the act of filing the certified judgment. That said, it is not necessary here to attempt to define the class of persons who may be entitled to file a Canadian judgment for registration in British Columbia under ss. 2 and 3 of the ECJDA, as I agree with the chambers judge that SMS was an "enforcing party" in this case and was clearly entitled to file for registration of the judgment.

- [48] The appellants appear to accept, as they must, that an assignee of a Canadian judgment is, in the ordinary course, an "enforcing party" entitled to register that judgment in British Columbia under the ECJDA. The appellants' argument is that SMS, on the unique facts of this case, was taken out of the definition of "enforcing party" because of R. 11.01 of the Ontario Rules.
- [49] In my view, the appellants' position rests simultaneously on an unduly narrow view of the term "enforcing party" in the ECJDA and an overly broad understanding of the effect of s. 11.01 of the Ontario Rules. Simply put, the assignment of the Ontario judgment gave SMS all of the rights and interests conferred by that judgment, including the right of execution, and the mere fact that SMS was required to take an administrative step prior to execution in Ontario (if they chose to execute in Ontario) is irrelevant to SMS' capacity to register the judgment in British Columbia.
- [50] The existence of a procedural or administrative hurdle to a party's capacity to immediately enforce a final Canadian judgment in the home jurisdiction does not deprive the party of the capacity to register the judgment in British Columbia. An enforcing party is a person entitled to enforce the judgment, not a person who has taken every step in furtherance of enforcement up until the final step of execution.
- [51] There are a number of circumstances in which a party, after being awarded rights or interests in a judgment, might need to take administrative or procedural steps before being formally entitled to execute. The steps required of a party post-judgment and pre-execution may well vary between the Ontario rules and the British Columbia rules. The ECJDA, which is to be understood liberally as a convenient and expeditious route to have judgments from other provinces and territories registered in British Columbia, does not require a party to complete all of the pre-execution steps in the foreign jurisdiction before being entitled to register the judgment in British Columbia: see *Solehdin v. Stern*, 2014 BCCA 482 at para. 24. If a party has all of the substantive rights and interests conferred by a final judgment in Ontario, they are "entitled to enforce" the judgment as contemplated by the ECJDA.
- [52] That is precisely the situation SMS was in despite Ontario R. 11.01. The Ontario courts describe an order to continue under R. 11.01 as "fundamentally an administrative order that does not affect the substantive rights and obligations of the parties": *Outfront Media Canada LP v. Clarity Outdoor Media Inc.*, 2017 ONSC 2136 at para. 73. Its purpose is "simply to ensure that the proper or effective parties to the action are identified in the proceeding before the action proceeds further": *1467736 Ontario Ltd. v. Galli*, [2003] O.J. No. 4186 (Ont. S.C.J.) at

para. 9. Rule 11.02, under which a party applies for an order to continue, "envisages an administrative act on the part of the registrar" and does "not contemplate a refusal of a requisition by the registrar on substantive grounds": Outfront Media at paras. 75, 77.

- [53] In short, the assignment of CONA's interest in the Ontario judgment to SMS gave SMS all of the rights and interests that inhere in the judgment. SMS was the only party entitled to act on the judgment. Rule 11.01 took nothing away from SMS. It simply required SMS to complete an administrative step before executing on the judgment in Ontario. There is no basis upon which we could conclude this deprived SMS of the benefit of s. 2 of the ECJDA. It follows from this that I respectfully disagree with the judge's conclusion that SMS ought to have secured a continuation order in Ontario before registering the judgment in British Columbia. In my judgment, if the Rule did actually stay SMS's post-judgment rights in Ontario (a point not conceded by SMS), the stay did not affect SMS's standing to register the Ontario judgment in British Columbia.
- [54] The only way in which R. 11 contemplates an impact on the assignee's substantive rights is by way of R. 11.03, which allows a defendant, after transfer or transmission of the plaintiff's interest, to "move to have the action dismissed for delay" if "no order to continue is obtained within a reasonable time." The appellants in this case did not move under R. 11.03 in Ontario, and expressed no intention of doing so.
- [55] Additionally, the court form used to apply for an order to continue under R. 11.02 (Form 11A), says: "A party who wishes to set aside or vary this order must make a motion to do so forthwith after the order comes to the party's attention." The Ontario court in Outfront Media suggested, without deciding, that an order to vary or set aside a continuation order is appropriate where necessary to ensure that "the new plaintiff in the action stands in the same relation to the defendant as did the previous plaintiff" and that it is not designed to confer authority to "dismiss an action on the grounds of substantive prejudice to a defendant": at paras. 78, 80. In any event, there was no suggestion from the appellants in this case that there would be any basis for them to apply to vary or set aside an order to continue.
- [56] The effect of R. 11.01 may be relevant on an application under s. 6 of the ECJDA for a stay on execution of the British Columbia judgment. That section specifically contemplates that a judgment stayed in the original jurisdiction may be or have been registered in British Columbia. It says:
- 6 (1) A party to the proceeding in which a registered Canadian judgment was made may apply to the Supreme Court for directions respecting its enforcement.
- (2) On an application under subsection (1), the court may
- (c) make an order staying or limiting the enforcement of the Canadian judgment, subject to any terms and for any period the court considers appropriate in the circumstances, if

(iii) an order staying or limiting enforcement is in effect in the province or territory of Canada where the Canadian judgment was made

[57] In my opinion, s. 6 provides the mechanism by which a judgment that has been stayed in the foreign jurisdiction may be challenged in British Columbia. It does not refer only to judgments that have been stayed subsequent to registration in this province. It captures any judgment that has been stayed in the foreign jurisdiction, including those that had been stayed at the time of the registration. The presence of s. 6 is, in my view, inconsistent with the arguments advanced by the appellants.

[58] If the appellants, on an application under s. 6, showed that there was some reason to believe the Ontario proceedings were subject to being dismissed under R. 11.03 or pursuant to a motion to vary or set aside under Form 11A, this would be an important factor in the judge's exercise of discretion to stay execution of the British Columbia judgment, not to declare it a nullity. *Apollo Real Estate Limited v. Streambank Funding Inc.*, 2012 BCSC 1088, is illustrative in this regard. In that case, the petitioner registered in British Columbia a default judgment obtained against the defendant in Ontario. On the defendant's application to set aside the British Columbia registration, the judge issued a stay so that the defendant could apply to set aside the default judgment in Ontario on the basis that he was never personally served and his counsel did not have authority to appear. The judge noted that whether or not there was a defect in the Ontario proceeding was not for the British Columbia courts to decide. The result was not that the British Columbia registration was set aside or declared a nullity, but that enforcement in British Columbia was stayed pending the application in Ontario.

[59] Again, no argument was made in the case before us that anything about R. 11 made the Ontario judgment invalid or deprived SMS of the benefits of the Ontario judgment. The appellants' argument rests exclusively on a technical reading of the ECJDA and the Ontario Rules which does not bear scrutiny. As the only party entitled to the fruits of a final monetary judgment and the only party entitled to act in furtherance thereof, SMS was "entitled to enforce" the Ontario judgment and had the legal capacity to register the judgment in British Columbia. I would not accede to this ground of appeal.

[60] I would dismiss the appeal.

"The Honourable Mr. Justice Harris"

I agree:

"The Honourable Madam Justice Fenlon"

I agree:

"The Honourable Madam Justice DeWitt-Van Oosten"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/ca/20/01/2020BCCA0182.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/capital-one-national-association-v-solehdin-2020>

Prepared on 28 October 2026 · Esheria