

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 1594/93

In the matter between:

ECONOMA PROPRIETARY LIMITED

Plaintiff

and

LEORNARD CHARLES HUDSON

Respondent

CORAM : DUNN J.

MR FINE FOR PLAINTIFF

MISS RIBA FOR DEFENDANT

JUDGMENT

17 JUNE 1994

In this application for summary judgment, the plaintiff seeks payment of the sum of E11,944.35 with interest thereon at the rate of 18.5% per annum from 1st May 1990 to date of payment and costs. The claim is based on a judgment which was entered against the defendant and one Ivan Hugo Dodd in the Durban and Coast Local Division of the Supreme Court of South Africa on the 26th September 1991 under case number 05646/91. A copy, certified to be a true copy, of the original order of the South African Court is annexed to the plaintiff's summons. The order reads-

Having heard Counsel for the plaintiff and having read the summons and the other documents filed of record, and the defendant being in default, the Court grants default judgment in favour of the plaintiff against the defendants jointly and severally, the one paying the other to be absolved for:-

1. Payment in the sum of R11 944,35.
2. Interest thereon at the rate of 18.5% per annum from 1 May 1990 to date of payment.
3. Costs of suit.

The order was signed by the Acting Assistant Registrar.

The application is resisted by the defendant on the grounds-

1. That the judgment relied upon by the plaintiff was obtained in the Republic of South Africa and as such is not automatically enforceable in Swaziland.
2. That his dealing with the plaintiff were in his capacity as a director of Intuthuko Homes (PTY) Ltd against which company the plaintiff instituted action for the payment of R23 944.35. The defendant states that a settlement was reached between the company and the plaintiff thus releasing the defendant from a deed of suretyship, signed by the defendant, in respect of the Company's indebtedness to the plaintiff and on which the plaintiff's claim in the South African Court was based.

The recipiocal Enforcement of Judgments Act No. 4/1992 does not extend to judgments of the Courts of the Republic of South Africa. The plaintiff cannot, in the circumstances, avail itself of the simple procedure provided by that Act and the Regulations thereunder.

This Court does, however, have common law jurisdiction to recognise and enforce foreign judgements. Under the Roman Dutch common law there are certain conditions which need to be fulfilled before a foreign judgment will be recognised-

1. It must be shown that the foreign Court had international jurisdiction or competence to decide the case.
2. It must be shown that the judgment rendered was final and conclusive.
3. The recognition and enforcement of the judgment must not be against public policy including observance of the rules of natural justice.

See Forsyth, PRIVATE INTERNATIONAL LAW 2nd Edition p.336 and the authorities there cited. Joubert, THE LAW OF SOUTH AFRICA VOL.2. p.363. The first requirement in so far as it relates to a judgment sounding in money against a defendant who is a natural person entails consideration of factors such as the residence or physical presence of the defendant within the jurisdiction of the foreign Court at the time of the commencement of the action; the domicile of the defendant within the jurisdiction of the foreign Court and the submission by the defendant to the jurisdiction of the foreign Court. Under the second requirement the effect of provisional and default judgments requires special consideration. The plaintiff has paid no attention, whatsoever, to these requirements. The plaintiff has simply come along, armed with a default judgment, and asked for summary judgment.

The residence or domicile of the defendant within the jurisdiction of the South African Court is not alleged. An attempt was made from the bar to argue that the defendant had submitted to the jurisdiction of the South African Court by choosing 29 Gillespie Street Durban as his domicillium citandi et executandi. This is clearly a matter which should have been pleaded. There is no indication on the papers whether any application for rescission of the default judgment was made or is pending before the South African Court. All these are matters in which the plaintiff was obliged to satisfy the Court before applying for summary judgment. The plaintiff has failed to do so.

The application for summary judgement is dismissed with costs.


B. DUNN
JUDGE