

BRITISH VIRGIN ISLANDS COURT OF APPEAL

Westburg Anstalt -v- Profitstar Anstalt Claim **No. BVIHCMAP 2013/0020**

INTERLOCUTORY APPEAL - ENFORCEMENT OF FINAL AND CONCLUSIVE FOREIGN MONETARY JUDGMENT WITHIN JURISDICTION - SERVICE OF CLAIM FORM OUT OF THE JURISDICTION FOR THAT PURPOSE - PERMISSION TO SERVE OUT REFUSED BY LEARNED JUDGE - RULE 7.3(5) OF THE CIVIL PROCEDURE RULES 2000 (AS AMENDED) - RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT, CAP 65 - WHETHER LEARNED JUDGE ERRED IN CONSTRUING CPR 7.3(5)(B) - WHETHER PURPOSIVE CONSTRUCTION SHOULD HAVE BEEN APPLIED TO CPR 7.3(5)(B)

The Claim was for the enforcement in the BVI of a final and conclusive monetary Judgment of the Supreme Court of Lichtenstein. The trial judge had found that the Court had no power under Civil Procedure Rule ("CPR") 7.3(5) to allow service out of the jurisdiction of a claim form where the claim was to enforce a judgment made by a foreign court or tribunal, which had not been registered in the High Court pursuant to Part 72 of CPR 2000.

At the time of judgment CPR 7.3(5) provided:

Enforcement

(5) A claim form may be served out of the jurisdiction if a claim is made to enforce any judgment or arbitral award which was made:

- (a) within the jurisdiction; or
- (b) by a foreign court or tribunal and registered in the High Court pursuant to Part 72.

Based on a literal reading of Rule 7.3(5) Westburg could not rely on this gateway since the judgment was not made within the jurisdiction

and was not registrable, and therefore had not been registered under the relevant enactment. The Court of Appeal determined that, notwithstanding the literal language of the rule by applying a purposive approach, one could readily use CPR 7.3(5). The words "and registered in the High Court pursuant to Part 72" were, it concluded, erroneous and "mere surplusage", which could safely be ignored.

Immediately following the delivery of the judgment, the CPR was amended, effective 1 February 2014, such that CPR 7.3(5) now reads: "*A claim form may be served out of the jurisdiction if a claim is made to enforce any judgment or arbitral award which was made by a foreign court or tribunal and is amenable to be enforced at common law*".

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