

Litigation

December 10, 2014

Supreme Court of Canada Denies Leave to Appeal Alberta Decision Enforcing Foreign Judgment

The Supreme Court of Canada (SCC) has refused leave to appeal a decision of the Alberta Court of Appeal (ABCA) in *SHN Grundstuecksverwaltungsgesellschaft MBH & Co. v. Hanne*, which recognized and enforced a German court judgment in Alberta. The case provides important guidance on when Canadian courts will recognize judgments granted by foreign courts.

Background

SHN v. Hanne involved a claim for enforcement of a foreign judgment. The defendant Dr. Juergen Hanne was a limited partner of the plaintiff company SHN Grundstuecksverwaltungsgesellschaft MBH. In 2001, the plaintiff brought a claim in the Regional Court of Berlin alleging breach of trust by the defendant for failing to collect rent from the lessee of a seniors home. The Regional Court awarded the plaintiff approximately €1 million in damages. The Superior Court of Berlin dismissed the defendant's appeal.

In 2007, the plaintiff commenced an action in Alberta to enforce the German judgment against the defendant, who had subsequently moved from Berlin to Calgary. Despite the defendant's objections, the action was heard by way of a summary trial based largely on affidavit evidence from foreign legal experts on German civil procedure. The summary trial judge concluded that the defendant had a "real and substantial connection" to Alberta and that the German judgment was final and conclusive. Importantly, she also held that the German judgment was not obtained by fraud, in violation of

natural justice, or in a manner contrary to public policy. Accordingly, none of the legal defences to enforcement in Canada applied. Both the summary trial judge and the ABCA held that the judgment was therefore enforceable in Alberta.

Decision

The SCC dismissed the defendant's application for leave to appeal, thereby ensuring the ABCA decision to enforce the foreign judgment will not be overturned.

In applying *Beals v. Saldanha*, a leading SCC case on the defences to enforcement of foreign judgments, the ABCA affirmed the following principles:

1. As first enunciated by the SCC in *Morguard Investments Ltd. v. De Savoye*, a foreign judgment will be enforced when: i) there is a "real and substantial connection" between the claim and the enforcing jurisdiction, ii) the judgment is for damages, and iii) the judgement is final and conclusive.
2. Only three recognized defences can prevent enforcement of a foreign judgment that satisfies the criteria from *Morguard*: i) fraud, ii) violation of natural justice, and iii) public policy. These defences are to be applied narrowly.
3. Canadian courts are not precluded from enforcing judgments from civil law jurisdictions. Courts must assess the foreign process and ensure it meets a minimum standard of fairness.
4. Differences in the legal process, including appellate procedure, the composition of judicial tribunals or rules of evidence are not in themselves sufficient to "shock the conscience" of Canadians and prevent enforcement under the natural justice defence.
5. The public policy defence should not be used lightly as it involves the impeachment of a foreign judgment by condemning the foreign law upon which the judgment is based.

Goodmans^{LLP} Update

Key Points for Canadian Companies

The ABCA decision in *SHN v. Hanne* is a reminder that Canadian courts are willing to enforce foreign judgments, including those from civil law jurisdictions, when the foreign process meets a minimum standard of fairness.

Companies with operations or assets in Canada should be mindful of this decision and the results in other recent cases where foreign judgments have been enforced by Canadian courts.

For further information on the enforcement of foreign judgments or the *SHN v. Hanne* decision, please contact any member of our Litigation Law Group.