

The Dubai Supreme Court on the Enforcement of Canadian (Ontario) Enforcement Judgment

Can an enforcement judgment issued by a foreign court be recognized and enforced in another jurisdiction? This is a fundamental question concerning the recognition and enforcement of foreign judgments. The answer appears to be relatively straightforward: “No”. Foreign enforcement judgments are not eligible to be recognized and enforced as they are not decisions on the merits (see in relation with the HCCH 2019 Convention, F Garcimartín and G Saumier, *Explanatory Report* (HCCH 2020) para. 95, p. 73; W Hau “Judgments, Recognition, Enforcement” in M Weller *et al.* (eds.), *The HCCH 2019 Judgments Convention: Cornerstones, Prospects, Outlooks* (Hart 2023) 25). This is usually referred to as the “prohibition of double *exequatur*” or, following the French adage: “*exequatur sur exequatur ne vaut*”. This question was recently presented to the Dubai Supreme Court (DSC), and its decision in the *Appeal No. 1556 of 16 January 2024* offers some useful insights into the status foreign enforcement (*exequatur*) decisions in the UAE.

I - Facts

In 2012, X (appellee) obtained a judgment of rehabilitation from the United States District Court for the Eastern District of New York ordering Y (appellant, residing and working in Dubai) to pay a certain amount of money. X later sought to enforce the American judgment in Canada (Ontario) via summary judgment procedures. In 2020, the Ontario court ordered enforcement of the American judgment, in addition to the payment of other fees and interests. The judgment was later amended by a judgment entered in 2021. X then sought enforcement of the Canadian judgment in Dubai by filing an application with the Execution Court of the Dubai Court of First Instance. The Enforcement Court issued an order declaring the Canadian judgment enforceable in Dubai. The enforcement order was later upheld on appeal. Y appealed to the DSC.

Before the DSC, Y argued that (1) the American judgment was criminal in nature, not civil; (2) the Canadian judgment was merely a summary order declaring the

American judgment enforceable in Ontario; and (3) the Ontario judgment did not resolve any dispute between the parties, as it was a declaration that the American judgment was enforceable in Ontario.

II - Ruling

The DSC found merit in Y's arguments. In particular, the DSC held that the Court of Appeal erred in allowing the enforcement of the Canadian judgment in Dubai despite Y's arguments that the Canadian judgment was a summary judgment enforcing an American judgment. The Supreme Court reversed and remanded the appealed decision.

III - Comments

The case commented here is particularly interesting because, to the best of the author's knowledge, it is the first case in which a UAE Supreme Court (it should be remembered that, there are four independent Supreme Courts in the UAE. For an overview, see [here](#)) has been called to rule on the issue of double *exequatur*. In this regard, it is remarkable that the issue of double *exequatur* is rarely discussed in the literature, both in the UAE and in the other Arab Middle Eastern jurisdictions. Nevertheless, it is widely accepted that a judgment a foreign court declaring enforceable a foreign judgment cannot be eligible to recognition and enforcement in other jurisdictions. (For some recent applications of this principle by some European courts, see *eg.* the Luxembourg Court of Appeal decision of 13 January 2021; the Court of Milan in a case rendered in February 2023. *Comp.* with the CJEU judgment of 7 April 2022, C-568/20, *J v. H Limited*. For a brief discussion on this issue in this blog, see [here](#)). This is because a judgment declaring enforceable a foreign judgment "is, by its own terms, self-limited to the issuing state's territory, or: as a sovereign act it could not even purport to create effects in another sovereign's territory" (Peter Hay, "Recognition of a Recognition Judgment within the European Union: "Double *Exequatur*" and the Public Policy Barrier" in Peter Hay et al. (eds.), *Resolving International Conflicts - Liber Amicorum Tibor Várady* (CEU Press, 2009) 144).

The present case highlights a possible lack of familiarity with this principle within

the Dubai courts. Specifically, the lower courts overlooked the nature of the Canadian judgment and declare it enforceable in Dubai. In its appeal, the judgment debtor did not *explicitly* avail itself with the prohibition of double *exequatur* although it argued that that the Canadian judgment was “not a judgment on the merits”. The judgment debtor merely stated the Ontario court’s judgment was a summary judgment declaring a foreign judgment of criminal rather than civil nature enforceable in Canada and not abroad .

While the Supreme Court acknowledged the merits of the judgment debtor’s arguments, its language might suggest some hesitation or unfamiliarity with the legal issue involved. Indeed, although the Court did not dispute the judgment debtor’s assertions that the “Canadian judgment was a summary judgment declaring enforceable a rehabilitation order and an obligation to pay a sum of money rendered in the United States of America,” it reversed the appealed decision and remanded the case, stating that the judgment debtor’s arguments were likely – “if they appeared to be true” – to lead to different results.

In the author’s view, such a remand may have been unnecessary. The court could have simply declared the Ontario enforcement order unenforceable in Dubai on the basis of the “*exequatur sur exequatur ne vaut*” principle.

One might question the rationale behind the judgment creditor’s choice to seek the enforcement of the Canadian judgment rather than the original American judgment in this case. One might speculate that the judgment creditor sought to avoid enforcement of an order to pay a specific sum arising out of a criminal proceeding. However, it is recognized in the UAE that civil damages awarded in criminal proceedings are likely to be considered enforceable (see, eg., the *Federal Supreme Court’s decision, Appeal No. 247 of November 6, 2012*, regarding the enforcement of civil damages awarded by an Uzbek criminal court).

Another possible consideration is that the judgment creditor sought to increase the likelihood that its application would be granted, as Dubai courts have shown reluctance to enforce American judgments in the past (see eg., *Dubai Court of Appeal, Appeal No. 717 of December 11, 2013*, concerning a Nevada Court judgment; *DSC, Appeal No. 517 of August 28, 2016*, concerning a California court judgment). In both cases, enforcement of the American judgments was refused due to the lack of reciprocity with the United States (however, in the first case, on a later stage of the proceeding, the DSC treated the Nevada judgment as

sufficient proof of the existence of the judgment creditor's debt in a new action on the foreign judgment (*DSC, Appeal No. 125/2017 of 27 April 2017*). The first case is briefly introduced here).

The positive outcomes at both the first and second instance levels may lend credence to this hypothesis. In general, however, there is no inherent reason why a Canadian judgment would be treated differently in the absence of a relevant treaty between the UAE and Canada (on the challenges of enforcing foreign judgments in the UAE, particularly in Dubai, in the absence of a treaty, please see our previous posts [here](#) and [here](#)).