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Enforcing a Montana Judgment in Alberta: A Perilous Pursuit?

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Cases Considered:

***Laasch v. Turenne*, 2009 ABQB 267**

A Montana resident secures a large money judgment in his or her home state. The judgment creditor needs to enforce that judgment in Alberta because the judgment debtor resides and maintains assets in this province. You are retained to effect the enforcement of that judgment. What are the available options? What are the advantages and disadvantages of each? These questions lay at the heart of *Laasch v. Turenne*.

Facts

The facts were straightforward. Nathan Laasch was 16 years old when, in November 2000, he suffered heart failure which resulted in his serious and permanent disability. He had attended at the office of Dr. Turenne on two occasions, the second being just one day before his attack, complaining of episodes of rapid heart rate, chest discomfort and lightheadedness. Dr. Turenne had apparently concluded that she could not diagnose the cause of his problems but had prescribed and administered a beta-blocker. It transpired that Nathan was suffering from Wolff-Parkinson-White Syndrome. Nathan and his mother launched an action in Montana against Dr. Turenne for medical malpractice alleging that beta-blockers were inappropriate for a person suffering from Wolff-Parkinson-White Syndrome.

Nathan and his mother were residents of Montana. At the time that Nathan attended Dr. Turenne's office, Dr. Turenne lived, practised medicine and carried on business in Montana. Within days of Nathan's heart failure, however, she shut down her medical practice, left Montana, moved back to her native Canada and settled in Bonnyville, Alberta where she worked as a physician. She had been practising in Montana for more than five years before her return to Canada. She was served in Bonnyville with Montana's equivalent of a statement of claim but she did not respond to that notice and did not participate in any way in the Montana action. Judgment was granted against her on June 5, 2006 in the amount of U.S. $5.25 million, comprised of compensatory damages of U.S. $3.5 million and punitive damages of U.S. $1.75 million. In the present application, Nathan and his mother were seeking an order for registration of the Montana judgment pursuant to the *Reciprocal Enforcement of Judgments Act*, R.S.A. 2000, c. R-6.

Reciprocal Enforcement of Judgment Act (*REJA*)

REJA offers a convenient and expeditious method of enforcing a foreign judgment in Alberta. It provides for a system of registration whereby a foreign judgment from a reciprocating jurisdiction can be registered in Alberta and, upon registration, it is of the same force and effect as a judgment from Alberta. There are, however, very few reciprocating jurisdictions. At present,

they are the common law provinces and territories of Canada (and so not Quebec), the Commonwealth of Australia and the bordering states of Washington, Idaho and Montana. The name of the statute suggests that, if one is fortunate enough to obtain a judgment in a reciprocating jurisdiction, like Montana, such a judgment will automatically be enforceable in Alberta. *Laasch v. Turenne* is a timely reminder that such is not the case.

Section 2(6) of *REJA* lays down certain defences to the registration of a foreign judgment. Most of them mirror defences available at common law based on the circumstances in which a foreign court will be viewed as having jurisdiction in the eyes of the enforcing court. Of particular importance is the defence relied upon by Dr. Turenne herself, section 2(6)(b). That provision reads:

> No order for registration shall be made if it is shown by the judgment debtor to the Court that
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> . . . .
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> the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit during the proceedings to the jurisdiction of that court.

This defence was basically reflective of the common law position at the time that *REJA* was enacted. Indeed, *REJA* was never intended to alter significantly the common law. It was intended only to provide a more expeditious means of enforcing a foreign judgment. The courts have, therefore, interpreted section 2(6)(b) in light of the common law to reach the conclusion that the time at which to determine whether the judgment debtor is ordinarily resident or carrying on business in the foreign jurisdiction is the time at which the action was commenced: see *Kelowna & District Credit Union v. Perl* (1984), 55 A.R. 100 (C.A.) followed by Justice Graesser in *Laasch v. Turenne*, at para. 51. Nathan's and his mother's application for an order for registration was rejected because of the operation of section 2(6)(b). Dr. Turenne had a clear defence because she did not submit to the Montana action and she was not ordinarily resident, nor carrying on business, in Montana at the relevant time. Justice Graesser closed his judgment by saying that, if the applicants wished "to pursue Dr. Turenne in Alberta on the judgment they [had] obtained, they [would] have to do so other than through the *Reciprocal Enforcement of Judgments Act*" (para. 133).

Enforcement of Foreign Judgments at Common Law

It was never intended that *REJA* would replace the common law method of enforcing foreign judgments. The intent was that *REJA* would offer a more expeditious procedure that would be available on the basis of reciprocity. Thus, a foreign judgment creditor is always free to rely on the common law route for enforcement. Indeed, *REJA* even provides in section 7 that the actual taking of proceedings under the Act does not deprive a judgment creditor, *inter alia*, of the right to enforce a foreign judgment at common law by bringing an action in Alberta on that judgment. A separate suit on a foreign judgment is the classic form of enforcing a foreign judgment at common law. Indeed, if the foreign country is not a reciprocating jurisdiction, it is the only means available. The common law method of enforcing a foreign judgment has certain disadvantages. In particular, it is more cumbersome than the simple registration process established by *REJA*. Undeniably, however, there are also advantages to the common law approach. The primary advantage of the common law action is represented by the seminal decisions of the Supreme Court in *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R.

1077 and *Beals v. Saldanha*, [2003] 3 S.C.R. 416. As a result of those decisions, a foreign default judgment can be enforced where there is a real and substantial connection between the foreign jurisdiction and the action or the parties. On the facts of *Laasch v. Turenne*, there is no doubt that the *Morguard/Beals* test would have been satisfied. Indeed, Montana was the obvious place for the suit. That was where the plaintiffs lived, where the cause of action arose and where the defendant lived and carried on her medical practice at the time that the cause of action arose. Unfortunately for Nathan and his mother, however, the *Morguard/Beals* test was never incorporated into *REJA*. *REJA* was based on the common law as it stood prior to *Morguard* and its terms have not been amended.

Nathan and his mother now face a further problem. Although, as we have seen, they are not precluded from seeking to enforce their judgment at common law, they may well now be out of time. Under *REJA*, the limitation period for registering a foreign judgment is six years from the date of the foreign judgment (s. 2(1)). The action at common law, however, was traditionally regarded as an action on a debt and thus the limitation period was the same as that for an action for breach of contract. After some doubt, the Ontario Court of Appeal recently re-affirmed that proposition in *Lax v. Lax* (2004), 70 O.R. (3d) 520. The Alberta Court of Appeal followed *Lax* in *Yugraneft Corp. v. Rexx Management Corp.* (2008), 433 A.R. 372 and made it clear that, as a result of section 3(1) of Alberta's *Limitations Act*, R.S.A. 2000, c. L-12, the basic limitation period for enforcing a foreign judgment in Alberta is two years from the date of the foreign judgment. In *Laasch v. Turenne*, the Montana judgment was granted on June 5, 2006 and thus the limitation period had expired about a year before Justice Graesser released his judgment in May 2009.

Proposals for Reform

In a report entitled *Enforcement of Judgments* (Final Report No. 94, September 2008), the Alberta Law Reform Institute recommended the enactment of various pieces of uniform legislation dealing with jurisdiction and the enforcement of foreign judgments. One of those pieces of legislation is the *Uniform Enforcement of Foreign Judgments Act* (*UEFJA*) which was first adopted by the Uniform Law Conference of Canada in 2003. Like *REJA*, *UEFJA* also establishes a system for the registration of foreign judgments but registration is not based on reciprocity. Most importantly, it incorporates the *Morguard/Beals* test by providing that a foreign court will be regarded as having jurisdiction where "there was a real and substantial connection between the State of origin and the facts on which the proceeding was based" (s. 8(f)). Furthermore, the limitation period under that statute is that provided by the state of origin or ten years from "the day on which the foreign judgment [became] enforceable in that State, whichever is earlier" (s. 5).

As a final matter, it should be noted that *UEFJA* restricts the enforcement of punitive damages and the like "to the amount of similar or comparable damages that could have been awarded in" the enforcing court (s. 6(1)). No such restriction exists at common law or under *REJA* where the rejection of foreign awards of punitive damages is dependent upon the vague principles of public policy. In general, Canadian courts have not been reluctant to enforce foreign awards of punitive damages: see, for example, *Beals* itself and *Old North State Brewing Co. v. Newlands Services Inc.*, [1999] 4 W.W.R. 573 (B.C.C.A.).

Conclusion

We do not know whether the judgment creditors in *Laasch v. Turenne* in fact launched, at the same time as their application for registration under *REJA*, an action at common law on their Montana judgment within the time limit. Certainly, the decision illustrates the limitations of *REJA* and the need to act quickly to enforce a foreign judgment. A further option available to Nathan and his mother would be to ignore the Montana judgment in their favour and to sue Dr. Turenne in Alberta on the original cause of action to see whether liability could be established afresh and, if so, what damages might be recoverable. Of course, any such action is an entirely new one and all issues of liability and compensation would have to be re-litigated. In addition, the potential plaintiffs would face the limitations problem presented by section 12(1) of Alberta's *Limitations Act* which mandates the application of Alberta's limitations law. It provides:

> The limitations law of Alberta applies to any proceeding commenced or sought to be commenced in Alberta in which a claimant seeks a remedial order.

However broad the limitation period in Montana, Nathan and his mother would appear to be out of time by virtue of Alberta's general two-year limitation period. The constitutionality of section 12(1) was affirmed by the Supreme Court in *Castillo v. Castillo* (2005), 260 D.L.R. (4th) 439 (S.C.C.).

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