

**[2023 Gib LR 238]****EDGAR v. AITCHISON ASSOCIATES LIMITED and  
RUTHERFORD**

SUPREME COURT (Yeats, J.): March 7th, 2023

2023/GSC/013

*Conflict of Laws—recognition of foreign proceedings—enforcement of English judgments—following UK’s withdrawal from European Union, English High Court no longer issues certificates pursuant to Council Regulation (EU) No. 1215/2012, art. 53 for enforcement of judgment—claimant may rely on certificate provided by English High Court under s.12 of Civil Jurisdiction and Judgments Act 1982 to enforce English judgment in Gibraltar*

The claimant sought a declaration that he was able to enforce a judgment of the English High Court by relying on a certificate issued under s.12 of the Civil Jurisdiction and Judgments Act 1982 of England and Wales.

The claimant obtained judgment in default against the defendants in the Business and Property Courts of the High Court of Justice of England and Wales. He had issued proceedings in Gibraltar against the defendants seeking the same relief. By operation of CPR 15.11, those proceedings had been automatically stayed. Section 23 of the Gibraltar Civil Jurisdiction and Judgments Act 1993 (“the Gibraltar CJJ Act”) provided:

“No proceedings may be brought by a person in Gibraltar on a cause of action in respect of which a judgment has been given in his favour in proceedings between the same parties, or their privies, in a court in Gibraltar or in a court of an overseas country unless that judgment is not enforceable or entitled to recognition in Gibraltar.”

The Gibraltar CJJ Act referred to the UK as a separate state for these purposes. The claimant was unable to pursue the Gibraltar claim unless he was unable to enforce or recognize the English judgment.

Prior to the UK’s withdrawal from the European Union, an English judgment was enforceable in Gibraltar pursuant to Council Regulation (EU) No. 1215/2012. A certificate under art. 53 of the Regulation could be obtained from the High Court which would be filed in the Supreme Court. The information required in an art. 53 certificate was the court of origin with address and contact details; the claimant’s details including address, date of birth *etc.*; the defendant’s details including address, date of birth *etc.*; and details of the judgment. Subject to certain limitations, the judgment would then be automatically recognized or enforceable. The Regulation

had been retained as part of Gibraltar's domestic law but it no longer applied in the UK. The English courts therefore no longer provided art. 53 certificates. The English courts did however issue certificates pursuant to s.12 of the English Civil Jurisdiction and Judgments Act 1982 ("the English CJJ Act") for the purposes of the recognition or enforcement of English judgments under the Hague Convention on Choice of Court Agreements.

The claimant had obtained a s.12 certificate. Such a certificate named the court, the claimant and the defendant but did not give contact details. It certified various details including the details of the claim form and sums claimed; that the claimant had obtained default judgment; and that no appeal had been brought. The claimant submitted that the substance of a s.12 certificate was the same as that of an art. 53 certificate, that EU legislation should be construed purposively and the court should therefore treat it as the same. There would be an anomaly if a judgment from any EU member state could be easily enforced in Gibraltar whereas, if a s.12 certificate was not accepted, an English judgment could not.

**Held**, ruling as follows:

The claimant could enforce the English judgment in Gibraltar pursuant to the provisions of the Regulation by relying on the s.12 certificate. The s.12 certificate contained all the information (and arguably more) required in an art. 53 certificate save for the contact details of the court, claimant and defendant, but these details were set out in the claim form and could therefore easily be ascertained and cross-referenced. A refusal to accept the s.12 certificate would put form over substance. There was no prejudice to anyone if the s.12 certificate was accepted. The Regulation had been retained as part of the law of Gibraltar and the legislature had mandated that it apply as between the UK and Gibraltar. The only way that could happen was if the s.12 certificate was accepted in place of an art. 53 certificate, which was necessary and just (paras. 14–16).

**Legislation construed:**

Civil Jurisdiction and Judgments Act 1993, s.23: The relevant terms of this section are set out at para. 5.

Council Regulation (EU) No. 1215/2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), art. 37: The relevant terms of this article are set out at para. 11.

art. 42: The relevant terms of this article are set out at para. 11.

art. 53: The relevant terms of this article are set out at para. 11.

Civil Jurisdiction and Judgments Act 1982 (c.27): s.12:

"Rules of court may make provision for enabling any interested party wishing to secure under [the 2005 Hague Convention] the recognition or enforcement in another Contracting State of a judgment given by a court in the United Kingdom to obtain, subject to any conditions specified in the rules—

- (a) a copy of the judgment; and
- (b) a certificate giving particulars relating to the judgment and the proceedings in which it was given.”

*D. Martinez* (instructed by Hassans) for the claimant.

1 **YEATS, J.:** By Part 8 claim form filed on September 30th, 2022, the claimant seeks a declaration that he is able to enforce a judgment of the English High Court by relying on a certificate issued under s.12 of the Civil Jurisdiction and Judgments Act 1982 of England and Wales (“the English CJJ Act”). The judgment which he ultimately wishes to have enforced is a judgment of the Business and Property Courts of the High Court of Justice of England and Wales made on November 15th, 2021 in proceedings between the claimant on the one hand and Aitchison Associates Ltd. (“AAL”) and Alan Neil Rutherford on the other (as claimant and defendants respectively in those proceedings).

2 The application for the declaration has become necessary because, following the United Kingdom’s withdrawal from the European Union, the claimant has found himself unable to produce the certificate required by Council Regulation (EU) No. 1215/2012 (“the Regulation”) for enforcement of a judgment.

3 Only a short note of the factual background to the case is necessary. In 2009 and 2010, AAL borrowed moneys from the claimant. By a deed of guarantee made on March 19th, 2009, Mr. Rutherford guaranteed the sums due by AAL. As a result of AAL and Mr. Rutherford’s failure to repay the amounts borrowed by AAL, the claimant issued proceedings in the English High Court on March 17th, 2021. Judgment in default against AAL in the sum of approximately £16.5m. was entered on November 15th, 2021 (“the English judgment”).

4 On March 18th, 2021, the claimant had issued proceedings in Gibraltar seeking the exact same relief against AAL and Mr. Rutherford (“the Gibraltar claim”). The claim form and particulars of claim were served on AAL on July 16th, 2021, but no defence has been filed. (Mr. Rutherford has not been served.) By operation of CPR 15.11, the proceedings were automatically stayed on January 30th, 2022.

5 Subject to an important caveat, s.23 of the Civil Jurisdiction and Judgments Act 1993 of Gibraltar (“the Gibraltar CJJ Act”) prevents a claimant from bringing proceedings in Gibraltar if the cause of action is the same as one in which he had obtained judgment in another country. The section provides:

“No proceedings may be brought by a person in Gibraltar on a cause of action in respect of which a judgment has been given in his favour in proceedings between the same parties, or their privies, in a court in

Gibraltar or in a court of an overseas country unless that judgment is not enforceable or entitled to recognition in Gibraltar.”

The claimant is therefore unable to pursue the Gibraltar claim unless he is unable to enforce or recognize the English judgment. The question of whether he is able to enforce or recognize the English judgment here depends on whether this court accepts the validity of a certificate issued by the English High Court on March 22nd, 2022 pursuant to s.12 of the English CJJ Act.

6 Prior to the United Kingdom’s withdrawal from the European Union, an English judgment could be enforced in Gibraltar pursuant to the Regulation. (The Regulation is a European Union regulation that deals with jurisdiction and with the recognition and enforcement of judgments in civil and commercial matters in member states.) A certificate under art. 53 (“art. 53 certificate”) could be obtained from the High Court in England and this would then be filed in this court. Subject to some limited exceptions, the judgment would then be automatically recognized and/or become enforceable. Although Gibraltar was not an EU member state in its own right (and therefore the courts of the United Kingdom would not ordinarily be the courts of a different member state for the purposes of the regulation), s.39 of the Gibraltar CJJ Act provides that Gibraltar and the United Kingdom shall be treated as if each were a separate state for the purposes of the Regulation.

7 The Regulation was retained as part of Gibraltar’s domestic law by s.6 of the European Union (Withdrawal) Act 2019. However, it no longer applies in the United Kingdom. Although it was part of the United Kingdom’s retained legislation during the implementation period (the period between January 31st, 2020, when the UK left the EU, and December 31st, 2020, the date by which a future relationship agreement was to be negotiated) it was revoked by s.89 of the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019.

8 A consequence of the inapplicability of the Regulation in the United Kingdom is that the English courts no longer provide art. 53 certificates. There is no mechanism by which one can be obtained. The English courts do however issue certificates pursuant to s.12 of the English CJJ Act for the purposes of the recognition or enforcement of an English judgment under the Convention on Choice of Court Agreements concluded on June 30th, 2005 at the Hague. The claimant has obtained such a certificate (“s.12 certificate”).

9 Mr. Martinez submitted that the substance of a s.12 certificate is the same as that of an art. 53 certificate. That EU legislation should be construed purposively and the court should therefore treat it as one and the same. Mr. Martinez pointed to the anomaly that would otherwise exist if a judgment

from any EU member state could be easily enforced in Gibraltar, whereas if a s.12 certificate is not accepted, an English judgment would not.

10 Section 39 of the Gibraltar CJJ Act still refers to the United Kingdom as a separate state for the purposes of the Regulation. Mr. Martinez submitted that in keeping the provision as it always has been, it must have been the legislature's intention to retain the Regulation for the purposes of enforcing United Kingdom judgments in Gibraltar and therefore it follows that there has to be flexibility when it comes to the production of the necessary certificate. I agree that this is likely. The other possibility is that the provision is still necessary because the Regulation continues to apply in the United Kingdom to proceedings issued prior to the end of the implementation period (as per art. 67 of the withdrawal agreement between the European Union and the United Kingdom and s.7A of the European Union (Withdrawal) Act 2018.)

11 In any case, what exactly is required under the Regulation for the purposes of enforcing a judgment of the courts of another member state? The applicable provisions are contained in Chapter III of the Regulation. In particular, I would highlight arts. 37 and 42. In so far as is relevant, these provide as follows:

*“Article 37*

1. A party who wishes to invoke in a Member State a judgment given in another Member State shall produce:

- (a) a copy of the judgment . . . and
- (b) the certificate issued pursuant to Article 53.”

*“Article 42*

1. For the purposes of enforcement in a Member State of a judgment given in another Member State, the applicant shall provide the competent enforcement authority with:

- (a) a copy of the judgment . . . and
- (b) the certificate issued pursuant to Article 53, certifying that the judgment is enforceable and containing an extract of the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest.”

The production of a certificate issued pursuant to art. 53 is therefore mandatory. Article 53 then says:

*“Article 53*

The court of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex I.”

12 The Annex 1 form requires the following information:

- (i) the court of origin with address and contact details;
- (ii) the claimant’s details including address, date of birth *etc.*;
- (iii) the defendant’s details including address, date of birth *etc.*; and
- (iv) details of the judgment, including whether it is a judgment in default, whether it is enforceable in the court of origin without further conditions being met; if it was served on the defendant; and the terms of the judgment (including interest and costs).

13 The s.12 certificate obtained by the claimant is a certificate entitled “Form 110 Certificate for enforcement in a foreign country under section 12 of the Civil Jurisdiction and Judgments Act 1982 (CPR 74.12 and Practice Direction 74A paragraph 7).” It names the court, the claimant and the defendant, but does not have contact details for any of these. It then certifies the following:

- (i) details of the claim form and the sums claimed;
- (ii) details of when and how the defendant was served;
- (iii) that the defendant did not acknowledge service;
- (iv) that no objection to the court’s jurisdiction has been made;
- (v) that the claimant obtained default judgment—including details of the judgment sum and costs;
- (vi) that the judgment carries interest, the rate of that interest and the date from which it is due;
- (vii) that the judgment has been served on the defendant;
- (viii) that no application to set aside the judgment has been made;
- (ix) that no appeal has been brought within the prescribed period;
- (x) that enforcement of the judgment is not stayed or suspended and is still enforceable; and
- (xi) that the certificate has been issued pursuant to s.12 of the Civil Jurisdiction and Judgments Act 1982.

14 Comparing the two, it seems to me that the s.12 certificate contains all the information (and arguably more) required in an art. 53 certificate—save for the contact details of the court, claimant and defendant. The contact details of the court, claimant and defendant are of course set out in

the claim form and they can therefore easily be ascertained and cross-referenced.

15 It is clear that refusing to accept the s.12 certificate would be putting form over substance. All the information required by an art. 53 certificate is contained in the s.12 certificate and the claim form. There is no prejudice to anyone if the s.12 certificate is accepted. The Regulation has been retained as part of the law of Gibraltar and the legislature has mandated that it apply as between the United Kingdom and Gibraltar. The only way that this can happen is if the s.12 certificate is accepted in place of an art. 53 certificate. In my judgment, this is necessary and just.

16 I therefore conclude that the claimant can enforce the English judgment here in Gibraltar pursuant to the provisions of the Regulation by relying on the s.12 certificate.

*Judgment accordingly.*

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