

CITATION: Kearney v. Collard Properties Inc., 2024 ONSC 3805
COURT FILE NO.: 24-95880
DATE: 2024/07/04

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Sean Kearney, Applicant

AND

Collard Properties Inc., Respondent

BEFORE: Justice R. Ryan Bell

COUNSEL: Geoffrey Cullwick, for the Applicant

HEARD: July 2, 2024

ENDORSEMENT

Overview

[1] Sean Kearney applies to register the May 6, 2024 judgment of Bourque J. of the Court of King’s Bench of New Brunswick. The application is made without notice to Collard Properties Inc.

[2] For the following reasons, the application is granted.

Mr. Kearney is entitled to proceed without notice

[3] Under s. 2(2) of the *Reciprocal Enforcement of Judgments Act*, R.S.O. 1990, c. R.5, notice of the application is to be provided in cases where the judgment debtor did not have notice of the original proceeding and did not submit to the jurisdiction of the original court; otherwise, the order may be made without notice. Section 2(2) provides:

Reasonable notice of the application shall be given to the judgment debtor in all cases in which the judgment debtor was not personally served with process in the original action and did not appear or defend or otherwise submit to the jurisdiction of the original court, but in all other cases the order may be made without notice.

[4] This is a somewhat unusual case in that Collard Properties was the applicant in the original proceeding that gave rise to the New Brunswick judgment. In addition,

- (i) Collard Properties agreed to the terms of settlement that gave rise to the judgment Mr. Kearney seeks to register in Ontario;

- (ii) Collard Properties appeared at the motion brought by Mr. Kearney to enforce the parties' settlement which resulted in an order to enforce;
- (iii) Collard Properties was served with Mr. Kearney's motion for contempt and to enforce the enforcement order – its legal counsel confirmed that it accepted service on the corporation's behalf; and
- (iv) Collard Properties consented to the terms of the consent order for judgment that gave rise to the judgment Mr. Kearney now seeks to register in Ontario.

[5] Mr. Kearney is entitled to bring this application without notice.

The judgment should be registered

[6] Where a judgment has been given in a court in a reciprocating state, the judgment creditor may apply to have the judgment registered, but no judgment shall be ordered to be registered if one of the exceptions listed in s. 3 of the *Reciprocal Enforcement of Judgments Act* applies. There are no s. 3 exceptions that apply in this case.

[7] The first exception is that the original court acted without jurisdiction. In this case, there is no question that the original court had jurisdiction over the underlying dispute. The underlying dispute involved the ownership and operation of 720434 N.B. Inc., a corporation incorporated under the *Business Corporations Act*, S.N.B. 1981, c. B-9.1. Collard Properties initiated the underlying application in New Brunswick.

[8] The second exception is that 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 submit to the jurisdiction of the court. The third exception is that the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, despite the judgment debtor being ordinarily resident or carrying on business within the jurisdiction, or did not agree to submit to the jurisdiction of the court. The second and third exceptions do not apply: Collard Properties was the applicant in the New Brunswick proceeding and carried on business in New Brunswick. It owns and operates properties in New Brunswick and appeared and submitted to the proceedings in New Brunswick.

[9] The fourth exception is that the judgment was obtained by fraud. It was not. Collard Properties consented to the terms of the consent order for judgment that gave rise to the judgment Mr. Kearney now seeks to register in Ontario.

[10] The fifth exception is that an appeal is pending. There is no appeal of the judgment pending. Collard Properties has not served a notice of motion for leave to appeal an order made on consent within seven days of the date of the order: *Rules of Court*, N.B. Reg. 82-73, r. 62.03.

[11] The sixth exception is that the judgment was in respect of a cause of action which for reasons of public policy would not have been entertained by the registering court. The underlying dispute involved the ownership and operation of a New Brunswick corporation. Collard Properties

initiated the underlying proceeding and consented to the terms of the consent order for judgment. The sixth exception does not apply.

[12] The final exception is that the judgment debtor would have a good defence if an action were brought on the original judgment. Collard Properties would not have a good defence because it consented to the judgment.

[13] There is no reason that this court should not grant an order for the registration of the judgment of Bourque J.

Conclusion

[14] The application is granted. I order that the judgment of Bourque J. dated May 6, 2024 be registered in accordance with the *Reciprocal Enforcement of Judgments Act*.

[15] Because the application proceeded without notice to Collard Properties, ss. 5 and 6 of the *Reciprocal Enforcement of Judgments Act* apply. In particular, notice of the registration shall be given to Collard Properties within one month after the registration is made and Collard Properties may apply to set aside the registration of the judgment, provided that such application shall be made within one month after Collard Properties has notice of the registration.

[16] Mr. Kearney is entitled to his reasonable costs of the application on a partial indemnity basis. I fix the amount of costs at \$5,585.64, all inclusive, in accordance with the Bill of Costs filed.

[17] The order has been signed.

Justice R. Ryan Bell

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Released: July 4, 2024