



**HALLETT, J.A.:**

This appeal involves the interpretation of **s. 6** of the **Reciprocal Enforcement of Judgments Act**, S.N.S. 1973, c. 13, s. 1. Specifically, whether a judge of the Supreme Court of Nova Scotia, upon an application by a judgment creditor to have a judgment registered in Nova Scotia, could vary the judgment obtained in another province.

Section 6 provides:

**6** Where a judgment is registered under this Act,

(a) the judgment, from the date of the registration, is of the same force and effect as if it had been a judgment given or entered originally in the registering court on the date of the registration, and proceedings may be taken thereon accordingly, except that where the registration is made pursuant to an *ex parte* order, no sale or other disposition of any property of the judgment debtor shall be made under the judgment before the expiration of the period fixed by clause (b) of subsection (1) of Section 7 or such further period as the registering court may order;

(b) the registering court has the same control and jurisdiction over the judgment as it has over judgments given by itself; and

(c) the reasonable costs of and incidental to the registration of the judgment, including the costs of obtaining an exemplification or certified copy thereof from the original court and of the application for registration, are recoverable in like manner as if they were sums payable under the judgment if such costs are taxed by the proper officer of the registering court and his certificate thereof is endorsed on the order for registration.

The appellant had loaned the respondent \$2,000.00 which was not repaid. In an affidavit filed in support of his ex parte application for registration of the judgment in Nova Scotia, the appellant swears:

2, As a result of the Defendant's failure to repay the loan as agreed I had to borrow money on my Canadian Tire Credit Card. The rate charged was 28.8 per cent per year compounded monthly by charging 2.4 per cent per month on the previous month's balance. Attached hereto and marked as exhibit "A" to this my affidavit is a copy of the card agreement.

On July 22nd, 1996, the appellant obtained a default judgment from the Mississauga Small Claims Court in the Province of Ontario for the sum of \$4, 335.45 which included pre-judgment interest in an amount apparently equal to the interest he was required to pay on the borrowing from Canadian Tire to that date plus costs and disbursements. The Court also awarded the appellant post-judgment interest at 28.8% compounded monthly.

The **Ontario Courts of Justice Act**, R.S.O. 1990, c. 11, ss. 127-130 inclusive, contains detailed provisions respecting awards of pre-judgment and post-judgment interest. Pursuant to s. 130 a court

with jurisdiction has the discretion to award a higher rate of interest than that provided for in s. 128 (pre-judgment interest) and s. 129 (post-judgment interest).

On December 10, 1996, the appellant applied to Justice Goodfellow of the Nova Scotia Supreme Court for an order registering the judgment in Nova Scotia. On that date, Justice Goodfellow disposed of the application by an oral judgment which was released in writing on December 17th, 1996.

On May 21st, 1997, Goodfellow, J. granted an Order, embodying his December 17th decision, that judgment be entered for the sum of \$2,000.00 (without any pre-judgment interest) plus costs of \$50.00. He also ordered that the appellant was entitled to interest from December 10th, 1996, at the rate of interest permitted by the **Interest on Judgments Act**, R.S.N.S. 1989, c. 233.

### **The Law**

Legislative provisions such as contained in s. 6(b) of the **Reciprocal Enforcement of Judgments Act** are for the purpose of enforcing foreign judgments. Whether such a judgment should be varied is for the Court of original jurisdiction, not the registering Court (**Lupton v. Lupton**, [1946] 2 D.L.R. 286, [1946] O.W.N. 326 (H.C.J.); **Meek v. Enright** (1977), 81 D.L.R. (3d) 108 (C.A.); **Ruttan v. Ruttan**, [1982] 1 S.C.R. 690; **Manzoni v. Manzoni** (1987), 67 Nfld. & PEIR 339 (Nfld. S.C.); **Hanil Bank of Canada v. Maria's Fashion Place (EDM) Ltd.** (1992), 9 O.R. (3d) 799 (Gen. Div.); **Dow & Duggan Prefabrication Ltd. v. Paquet** (1993), 127 N.S.R. (2d) 71 (N.S.S.C.)).

Although the judgment of the Supreme Court of Canada in **Ruttan v. Ruttan, supra**, dealt with the registration of foreign judgments involving the enforcement of maintenance orders, the following words of the Supreme Court of Canada are relevant as to the effect of registering foreign judgments under the **Reciprocal Enforcement of Judgments Act**:

I am also in agreement with him [Hinkson J.A.] in his reliance on the case of *Meek v. Enright* (1977), 5 B.C.L.R. 11, and I refer to the following passage from the judgment of Bull J.A. in that case at pp. 16 and 17:

Admittedly the relevant provisions could have been more clearly phrased. But I get some comfort for my view (in confirmation of that of the Supreme Court Judge) when I consider that what I think is a sound, but broader, view of the basic legislative policy lying behind the reciprocal registrations and enforcement of foreign judgments and orders, I think it plain, both in logic and judicial history, that where a foreign court having jurisdiction over the parties makes an order or judgment affecting their respective rights, and a party against whom a duty or liability is found moves to another jurisdiction, the reciprocal provisions for following that person to that jurisdiction with that judgment for enforcement should not endow the new jurisdiction with the right to do anything more than carry out the enforcement. Whether the judgment should be varied, changed, revoked or enforcement refused or delayed should be for the court of original jurisdiction.

The decision of the Supreme Court of Canada in **Ruttan v.**

**Ruttan** has settled the law on this issue.

### **Justice Goodfellow's Decision**

In rendering his decision on this application Justice Goodfellow stated:

This court determines what rate of prejudgment interest will be applied to the Nova Scotia judgment and on registration this judgment would become a Nova Scotia judgment.

Interest is governed by the **Judicature Act**, S.N.S.

(1992), c. 16 and s. 41 outlines the rules of law and s. 41(i) is as follows:

41(i) in any proceedings for the recovery of any debt or damages, the Court shall include in the sum for which judgment is to be given interest thereon at such rate as it thinks fit for the period between the date when the cause of action arose and the date of judgment after trial or after any subsequent appeal;

It has been held frequently that that provision does not permit compound prejudgment interest. **Thomas-Canning v. Juteau**, (1993) 122 N.S.R. (2d) 23.

I have little doubt that such a rate of interest as claimed also offends the basic principles of equity and quite probably the **Interest Act**. In any event, I am only prepared to allow prejudgment interest on the \$2,000.00 debt at the rate of 6%. .....

### **Disposition of the Appeal**

The jurisdiction of the Mississauga Small Claims Court to grant the judgment in issue was not challenged on the application as it was made *ex parte*; nor on this appeal. Neither of the parties to the appeal appeared in person. The appellant filed a factum upon which he relies. The respondent, although given notice of the appeal, filed nothing.

Justice Goodfellow erred in refusing to enforce the pre-judgment interest and cost component (\$2,335.45) of the Ontario judgment. Section 6(b) of the **Reciprocal Enforcement of Judgments Act** does not confer jurisdiction to vary a foreign judgment.

Justice Goodfellow also appears to have relied on s. 41(i) of the **Judicature Act**, S.N.S. (1992), c. 16 for his authority to vary the judgment. Section 41(i) states:

**41** In every proceeding commenced in the Court, law and equity shall be administered therein according to the following provisions:

. . . . .

(i) in any proceeding for the recovery of any debt or damages, the Court shall include in the sum for which judgment is to be given interest thereon at such rate as it thinks fit for the period between the date when the cause of action arose and the date of judgment after trial or after any subsequent appeal;

Section 41(i) of the **Judicature Act** deals with proceedings in Nova Scotia for the recovery of any debt or damages. The application before Justice Goodfellow was in a proceeding for the

registration of a foreign judgment. Section 41(i) of the **Judicature Act** was not relevant to the issue before him.

Justice Goodfellow was correct in ordering that post-judgment interest on the judgment as registered in Nova Scotia be at the rate provided for by the **Interest on Judgments Act** of Nova Scotia. This must be so because s. 6(a) of the **Reciprocal Enforcement of Judgments Act** states that when a judgment is registered under the **Act**, the judgment from the date of registration is of the same force and effect as if it had been a judgment given or entered originally in the registering court on the date of registration.

### **The Interest on Judgments Act, R.S.N.S. 1989, c. 233**

Section 2(1) of the **Interest on Judgments Act** states:

2 (1) Until it is satisfied, every judgment debt shall bear interest at the rate of five per cent *per annum* or, where another rate is prescribed pursuant to subsection (2), at that other rate.

Pursuant to s. 2(2) the Governor-in-Council may make regulations determining rates of interest, etc. on judgment debts. The Governor-in-Council has not passed any regulations under the

authority of this section.

Section 3 of the **Interest on Judgments Act** provides:

**3** Unless it is otherwise ordered by the court such interest shall be calculated from the time of the rendering of the verdict or of the giving of the judgment, as the case may be, notwithstanding that the entry of judgment upon the verdict or upon the giving of the judgment has been suspended by any proceedings either in the same court or on appeal.

Therefore, I have concluded that the appellant was entitled to have the Ontario judgment registered as of December 10th, 1996, the date Justice Goodfellow rendered his oral judgment. The Ontario judgment of \$4,335.45 would bear interest at the rate prescribed in the Ontario judgment for post-judgment interest of 28.8% compounded monthly from July 22nd, 1996, to December 10th, 1996, but thereafter the post-judgment interest that would apply to the judgment as registered in Nova Scotia would be at the rate of 5% per annum. This does not vary the Ontario judgment but only limits the interest that is payable on the judgment as registered in Nova Scotia.

If a judgment creditor's application for registration is made ex

*parte*, as in this instance, the **Reciprocal Enforcement of Judgements Act** contains a procedure that allows a judgment debtor to challenge a foreign judgment even after registration of the judgment pursuant to the **Act**. This procedure, set out in s. 7 of the **Act**, is as follows:

**7** (1) Where a judgment is registered pursuant to an *ex parte* order,

(a) within one month after the registration or within such further period as the registering court may at any time order, notice of the registration shall be served upon the judgment debtor in the same manner as an originating notice is required to be served; and

(b) the judgment debtor, within one month after he has had notice of the registration, may apply to the registering court to have the registration set aside.

(2) On such an application the court may set aside the registration upon any of the grounds mentioned in subsection (5) of Section 3 and upon such terms as the court thinks fit.

The grounds upon which the registration may be set aside are quite extensive as s. 3(5) of the **Act** provides:

**3** (5) No order for registration shall be made if it is shown to the court to which application for registration is made that

(a) the original court acted either

(i) without jurisdiction under the conflict of laws rules of the court to which application is made, or

(ii) without any authority under the law in force in the reciprocating state where the judgment was made to adjudicate concerning the cause of action or subject-matter that resulted in the alleged judgment or concerning the person; of the alleged judgment debtor,

Or without such jurisdiction and without such authority;

(b) 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 proceeding to the jurisdiction of that court;

(c) the judgment debtor, being the defendant in the proceeding, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court;

(d) the judgment was obtained by fraud;

(e) an appeal is pending or the time within which an appeal may be taken has not expired;

(f) the judgment was in respect of a cause of action that for reasons of public policy or for some similar reason would not have been entertained by the registering court; or

(g) the judgment debtor would have a good defence if a proceeding were brought on the judgment.

The record of the proceedings before Justice Goodfellow, scant as it is, shows that the respondent (the judgment debtor) was served with the statement of claim in Port Hawkesbury in the Province of Nova Scotia which fact begs the question whether or not the respondent was carrying on business or was ordinarily resident within the jurisdiction of the Mississauga Small Claims Court. If not, there exists grounds to set aside the registration.

Justice Goodfellow, as is apparent from his decision, was understandably concerned about the award of 28.8% interest for both pre-judgment and post-judgment interest. He suggested that such an extraordinarily high rate of interest likely offends both the basic principles of equity and the **Interest Act**. These are factors which could be considered under **s. 3(5)(f)** or **(g)** on an application to set aside the registration.

In short, the registration of the judgment in Nova Scotia,

having been obtained on an *ex parte* application, does not close the door on the judgment debtor's right to challenge the registration if he applies to the Court in accordance with the provisions of the **Act** and can bring himself within one of the grounds set out in **s. 3(5)** of the **Act**.

The appellant shall have his costs of the appeal in the amount of \$300.00 inclusive of disbursements.

I would make the following Order:

IT IS ORDERED THAT the appeal is allowed in part; the Order of Justice Goodfellow dated may 21, 1997, and the Registration of the Mississauga Small Claims Court judgment are set aside.

IT IS FURTHER ORDERED THAT the judgment obtained by the appellant John Susin against the respondent Joe Delazzer O/A Joe Del in the Mississauga Small Claims Court of Ontario (Claim

No. M-6914/95) be registered in accordance with the provisions of s. 3(3) of the **Reciprocal Enforcement of Judgments Act** by filing this Order to which is attached a copy of the Certificate of Judgment issued by the Clerk of the Mississauga Small Claims Court.

**NOT WITHSTANDING THE PROVISIONS OF THE PRECEDING PARAGRAPH, IT IS FURTHER ORDERED THAT** judgment be entered by the Prothonotary of the Supreme Court of Nova Scotia in the amount of \$4,335.45 with post-judgment interest on this sum at the rate of 28.8% compounded monthly from July 22nd, 1996, to December 10th, 1996, plus costs of the appeal in the amount of \$300.00. And that interest on the judgment as entered in the Supreme Court of Nova Scotia pursuant to this Order shall be at the rate of 5% per annum after December 10th, 1996.

**IT IS FURTHER ORDERED THAT** the appellant, on or before January 30th, 1998, shall comply with the provisions of s. 7(1) of the **Reciprocal Enforcement of Judgments Act**.

**IT IS FURTHER ORDERED THAT** the notice to be personally served on the respondent pursuant to s. 7(1) of the **Act** shall be in the following form:

**TAKE NOTICE** that I have registered in Nova Scotia the judgment I obtained against you in the Mississauga Small Claims Court of Ontario in the amount of \$4,335.45.

**FURTHER TAKE NOTICE** that pursuant to s. 7 of the **Reciprocal Enforcement of Judgments Act**, you may, within one

(1) month of being served with this notice, apply to the Supreme Court of Nova Scotia to have the registration set aside upon any of the grounds mentioned in s. 3(5) of the **Act**.

**FURTHER TAKE NOTICE THAT** attached hereto is a true copy of the decision of the Nova Scotia Court of Appeal and a true copy of the Order granted by that Court following the appeal from Justice Goodfellow's Order.

**IT IS FURTHER ORDERED THAT** the appellant shall prove compliance with the notice requirements of this Order by filing an affidavit of service in the usual form with this Court on or before February 15th, 1998.

Hallett, J.A.

Concurred in:

Hart, J.A.

Bateman, J.A.

NOVA SCOTIA COURT OF APPEAL

**BETWEEN:**

JOHN SUSIN

Appellant

- and -

JOE DELAZZER OA JOE DEL

Respondent

REASONS FOR  
JUDGMENT BY:

HALLETT, J.A.