

INTERNATIONAL LAW

Ontario Court expands enforceability of foreign judgments

By Brett Harrison

In a recent decision the Ontario Court expanded the enforceability of foreign judgments to non-monetary judgment.

In *Pro Swing Inc. v. ELTA Golf Inc.*, the Superior Court of Ontario held that a consent decree and a requirement for the provision of an accounting by ELTA, as ordered by the U.S. District Court of the Northern District of Ohio, Eastern Division, were indeed enforceable in Ontario.

The Ontario Court ruled that the requirement that an order be for a fixed sum could be relaxed or removed depending upon the circumstances of the case. The court

also held that sections of an order that possess the requisite finality could be severed and enforced.

In 1998, Pro Swing Inc., operating in Ohio, filed a complaint in the U.S. Court against an Ontario company, ELTA Golf Inc., for, *inter alia*, trademark infringement. In July 1998 the parties signed a settlement agreement and the U.S. Court endorsed the consent decree that enjoined ELTA from using the trademark.

In December 2002, Pro Swing learned that ELTA was violating the decree and launched a civil contempt proceeding against ELTA. By order dated February 25, 2003, the U.S. Court again

enjoined ELTA and required ELTA to provide an accounting of profits derived from these sales.

When ELTA again violated the order, Pro Swing commenced proceedings in Ontario to enforce the consent decree and the US enforcement order.

The first issue that the court addressed was whether the consent decree was enforceable in Ontario, given that it was not for a fixed sum of money. Citing *Morguard Investments Ltd. v. De Savoye*, the court held that while *Morguard* did not change the law relating to the need for a fixed sum of money, this requirement may be relaxed or removed, depending upon the circumstances of the case at hand.

The court concluded that in order to be consistent with the principles espoused in *Morguard*, *Hunt v. T & N plc*, *United States of America v. Ivey* and *Beals v. Sal-*

danha, and in light of the consensual nature of the decree, it was valid and enforceable in Ontario.



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The court noted that the parties intended extraterritorial application of the agreement, as it was reflected in the settlement. As well, the underlying factual matrix was outlined in the settlement.

The court determined that both of these factors favoured the enforcement of the order.

The second issue addressed related to the requirement for finality in a judgement in order for it to be enforced in a foreign jurisdiction. The court concluding that finality is both essential and necessary, however, when the court examined the enforcement order, it concluded that a number of the provisions contained in the order did not offend the need for finality and as such could be severed and enforced.

Brett Harrison is an associate at McMillan Binch LLP. He acknowledges the assistance of summer student Neal Hewitt on this article.

Reasons in *Pro Swing Inc. v. ELTA Golf Inc.* [2003] O.J. No. 5434, are available from FULL TEXT: 2410-024, 6 pp.