

Court of Appeal—enforcement of foreign judgments and public policy defences (Lenkor v Puri)

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Dispute Resolution analysis: This case provides a helpful summary of the principles a court will apply in respect of an application to enforce a foreign judgment under common law. It makes clear that the considerations are starkly different to those applicable to a claim to enforce a contract. In particular, there is sound justification for taking a different approach to substantive claims and enforcement claims, reflecting the different role performed by the court in each circumstance. The Court of Appeal upheld the decision below in this instance, which was to allow the enforcement of a judgment properly obtained by a court of competent jurisdiction. The defence that enforcement was contrary to public policy (the underlying contract being tainted by illegality) failed for a number of reasons, including the limited degree of connection between the claim and the relevant illegality, which must be balanced against the strong public policy in favour of finality and in favour of enforceability. Written by Georgia Whiting, barrister, 4 King’s Bench Walk.

Lenkor Energy Trading DMCC v Puri [\[2021\] EWCA Civ 770](#)

What are the practical implications of this case?

Alongside the useful summary of the factors which a court will take into consideration when determining an application to enforce a foreign judgment, it is also of note that the judge below had held that there was no authority to the effect that the Courts of England and Wales are required to investigate ‘the existence of any association or causal connection between a transaction tainted with illegality and an otherwise unimpeachable cause of action underlying a foreign judgment’. However, it seems likely that when considering a defence of public policy (illegality in this instance) the courts will consider the degree of connection between the claim sought to be enforced and the relevant illegality. The degree of connection between the claim and the illegality must also be balanced against the strong public policy in favour of finality, and in favour of enforceability. It is clear that a defence of this nature will only succeed in rare cases; this was not such a rare case and the appeal failed.

What was the background?

Mr Puri, a British citizen, was a businessman active in the energy sector. At the relevant time, he was the sole owner, principal, and controller of IP Commodities Dubai (IPC Dubai), a company incorporated in Dubai. Lenkor Energy Trading DMCC (Lenkor Dubai) was a company incorporated in Dubai, operating in the oil supply and energy trading industry. The sister company of Lenkor Dubai entered into a tripartite agreement with IPC Dubai and a third company incorporated in Pakistan (the Buyer) for the supply of gasoil to the Buyer. It transpired that the oil in question was not that contracted for, which Lenkor sourced from Iran, with the intention of deceiving the Buyer and the Pakistani authorities into accepting it as a delivery for the type of oil contracted from the United Arab Emirates.

The dispute which arose as to the nature of the goods and payments made and owing was submitted to arbitration. The arbitrator was satisfied that Lenkor had entered into the tripartite agreement with the intention of committing illegal acts; and committed them in the course of performing the contract. He held that IPC had forfeited any right to commission because of its knowledge of Lenkor’s illegal conduct. In the course of his consideration of the claims, the arbitrator also discussed the status of several guarantee cheques drawn by IPC Dubai in favour of Lenkor. He held that Lenkor was not obliged to return these cheques,

but that any amount recovered on the cheques would be held for the benefit of Lenkor 'and would, as between Lenkor and IPC Dubai, be receipt by it for the account of Lenkor'. Accordingly, any sums recovered by reason of any liability on the cheques were to be credited against the liability of IPC Dubai as awarded in the arbitration.

Proceedings in Dubai followed, as Mr Puri had previously signed two cheques, each drawn on the account of IPC Dubai at a Dubai branch of Habib Bank, in favour of Lenkor Dubai. When Lenkor Dubai attempted to present the cheques, there were insufficient funds in the account to meet them and they were not, accordingly, honored. By virtue of Article 599/2 of the Dubai Commercial Transactions Law, a cheque may not be issued unless the drawer has, at the time of drawing the cheque, sufficient funds to meet it. Further, by the same law, a person who draws the cheque is deemed to be personally liable for the amount of the cheque.

The proceedings in Dubai resulted in a judgment against Mr Puri personally, and Lenkor sought to enforce that judgment against him in England. Mr Puri resisted that application on the ground that, to enforce the Dubai judgment, would be contrary to public policy. The reason for saying so was that the underlying transaction, which was in the context in which he signed the cheque, was tainted by illegality. That argument failed before a master and subsequent judge below.

It was common ground that the legal framework was encapsulated in Rules 42 and 51 as set out in Dicey, Morris & Collins on the Conflict of Laws (15th ed). Rule 42 is the basic rule, namely, that a final and conclusive foreign judgment for a debt or definite sum of money given by a court of competent jurisdiction may be enforced by a claim in England, unless it is impeachable on grounds set out in later Rules. Rule 51 is:

'A foreign judgment is impeachable on the ground that the enforcement or, as the case may be, recognition, would be contrary to public policy.'

It was that rule upon which Mr Puri relied.

What did the court decide?

The court agreed with both the master and the judge below (for the reasons that they gave) that the defence must fail. Firstly, this was not a question of enforcing a contract, it was a question of enforcing a judgment given by a foreign court of competent jurisdiction; the two were not the same. The judgment of a foreign court of competent jurisdiction creates an obligation to pay the judgment sum enforceable in the jurisdiction as a debt, irrespective of the underlying cause of action. It was common ground that the Dubai court was such a court.

Secondly, what Mr Puri did was to draw a cheque on a Dubai account held at a Dubai bank, which had particular legal consequences for him in Dubai, personally. That liability was independent of the underlying transaction.

Thirdly, Lenkor's claim against IPC Dubai was not a contractual claim either; it was either a claim for unjust enrichment, or under a separate agency agreement.

Fourthly, the quantum of judgment was neither the same as the contractual price, nor the same as the face value of the cheques. It was directly reflective of the amount that was actually paid. Whereas a guarantee (properly so-called) would have required IPC Dubai to pay what the Buyer was obliged to pay but had failed to pay, the judgment sum corresponded to what the Buyer had in fact paid. Thus, even if one 'looked through' the form of claim against Mr Puri, the underlying claim was still a long way from an attempt to enforce an illegal contract, let alone the Buyer's payment obligation. There was, therefore, only a slight degree of connection between the claim sought to be enforced and the relevant illegality. The degree of connection between the claim and the illegality also fell to be balanced against the strong public policy in favour of finality, and in favour of enforceability.

Fifthly, the arbitrator found that it would be unjust for IPC Dubai to retain the funds that it had actually received on account of cargo actually delivered. It would be equally unjust for Mr Puri to retain the economic benefit of those funds. Accordingly, the appeal was dismissed.

Case details

- Court: Court of Appeal (Civil Division)
- Judges: Lord Justice Lewison, Lord Justice Arnold and Lord Justice Edis
- Date of judgment: 21 May 2021

[Georgia Whiting](#) is a barrister at 4 King's Bench Walk, and a member of LexisPSL's Case Analysis Expert Panels. If you have any questions about membership of these panels, please contact caseanalysiscommissioning@lexisnexis.co.uk.

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