Neutral Citation Number: [2019] EWHC 1391 (QB)

Case No: QB/2018/0139

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 5 June 2019

Before :

THE HONOURABLE MR JUSTICE MURRAY

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Between :

JOHN KENNETH PERCIVAL	**Appellant**
- and -	
MOTU NOVU LLC	**Respondent**

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- -

Mr Philip Ahlquist (instructed by **Gibson, Dunn & Crutcher UK LLP**) for the **Appellant**
Ms Elaine Palser (instructed by **Howat Avraam Solicitors**) for the **Respondent**

Hearing date: 1 February 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE MURRAY

Mr Justice Murray :

1. This is an appeal by Mr John Kenneth Percival against the order of Master Cook dated 12 April 2018 and sealed on 13 April 2018 ("the Order") registering three Italian judgments specified in the Order ("the Italian Judgments") under chapter III of Council Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2001] OJ L12/1 ("the Regulation") for enforcement in England and Wales. The effect of registering the Italian Judgments under the Regulation is to declare them enforceable in England: Article 38 of the Regulation.

2. The Italian Judgments are:

   i) a ruling dated 30 May 2007 of the Tribunal of Milan ("the Milan Tribunal") in proceedings number RG 34100/2006 ("the Tribunal Judgment") granting judgment in favour of the claimants, Mr Enrico Teruzzi, Ms Carmen Puthod and La Fattoria di Enrico & Carmen società semplice – società agricola ("La Fattoria" and, together with Mr Teruzzi and Ms Puthod, "the Original Claimants") against the defendants, Mr Percival and PLC Holdings srl ("the Original Defendants") and ordering the Original Defendants to pay the Original Claimants the amount of €3,454,047.00 plus interest and costs;

   ii) a ruling dated 20 October 2010 of the Court of Appeal of Milan ("the CA Milan") in proceedings number RG 2735/2007 ("the CA Milan Judgment") under which the CA Milan allowed in part an appeal by the Original Defendants against the Tribunal Judgment, reducing the amount of damages awarded to the Original Claimants to €3,226,900 plus interest and costs (the costs were erroneously stated by the court to be €28,000,000, but this was later corrected to read €28,000) but otherwise affirming the Tribunal Judgment; and

   iii) a ruling dated 8 March 2012 of the Supreme Court of Cassation of the Republic of Italy ("the Italian SCC") in proceedings number RGN 1640/2011 ("the Italian SCC Judgment") under which the Italian SCC rejected the further appeal by the Original Defendants, affirming the CA Milan Judgment and awarding a further €15,200 in costs to the Original Claimants.

3. As should be apparent from the foregoing summary, the three Italian Judgments all arise out of the same dispute, the Tribunal Judgment being a first instance decision in favour of the Original Claimants, the CA Milan Judgment and the Italian SCC Judgment being successive appellate judgments in the same case.

4. The dispute arose out of an aborted property transaction in Italy. Mr Teruzzi and Ms Puthod are husband and wife. La Fattoria was a "pass-through" company incorporated under Italian law and owned by Mr Teruzzi and Ms Puthod through which the property at the centre of the dispute was temporarily owned. It has since been dissolved. Mr Percival's co-defendant, PLC Holdings srl, an Italian company, has also since been dissolved, leaving the appellant, Mr Percival, as the sole judgment debtor.

5. By an Assignment of Rights of Judgment dated 28 March 2011 (but signed by the parties on 29 June 2011) and governed by the laws of the Commonwealth of Massachusetts ("the 2011 Assignment"), Mr Teruzzi assigned to the respondent, Motu

Novu LLC ("Motu Novu"), a Delaware limited liability company, all of his right, title and interest in the Tribunal Judgment and the CA Milan Judgment. There is a dispute between the parties as to whether the 2011 Assignment was also effective to transfer the right, title and interest of Ms Puthod and La Fattoria in those judgments or, if not, whether that fact is relevant to the effectiveness of the registration.

6. In the 2011 Assignment Mr Teruzzi covenanted and warranted that no appeals from the Tribunal Judgment and the CA Milan Judgment were pending and that the time for appeal had expired. It is common ground, however, that the proceedings leading to the Italian SCC Judgment were served on the Original Claimants on 17 January 2011, pre-dating the 2011 Assignment by over two months. There is a dispute between the parties as to whether this fact is relevant to the effectiveness of the registration of the Italian Judgments by the Order.

Chapter III of the Regulation

7. Section 2 of chapter III of the Regulation sets out a scheme intended to enable a claimant who has obtained a judgment from a court in one member state of the European Union ("EU") to enforce that judgment in another EU member state relatively quickly and with a minimum of formality. The scheme is helpfully described in paragraphs 7.04 and 7.26 to 7.29 of Adrian Briggs, *Civil Jurisdiction and Judgments* (6th edn 2015) ("*Briggs CJJ*"). Further references in this judgment to a "foreign judgment" mean a judgment given by a court of an EU member state other than the one in which registration for enforcement under chapter III of the Regulation is sought.

8. The scheme involves two stages:

    i) under Article 39 of the Regulation, a first stage involving only the applicant, who must be an "interested party" and who applies *ex parte* to the relevant "court or competent authority" listed in Annex II to the Regulation to obtain an order for registration of the foreign judgment in order to permit enforcement locally; and

    ii) under Article 43 of the Regulation, a second stage, *inter partes*, during which the respondent (the judgment debtor) has the opportunity to raise certain limited objections by lodging an "appeal".

9. In England and Wales, the application for registration is made to the High Court (subject to an exception not relevant to this case), under Annex II to the Regulation, and the appeal against the decision on the application is also made to the High Court, under Annex III to the Regulation. Accordingly, as noted by Professor Briggs (*Briggs CJJ* at paragraph 7.28), the order for registration having been made *ex parte*, the "appeal" under Article 43 might more naturally be described in domestic terms as an application to set aside the order, rather than as an appeal against the order, although, in the words of Professor Briggs, "the principle is clear enough".

10. Under Article 44 of the Regulation, the order made on appeal under Article 43 is subject to a single further appeal on a point of law, which in England and Wales would be to the Court of Appeal.

11. The *ex parte* stage of the registration process is governed by Articles 38 to 42 of the Regulation. The *inter partes* stage is governed by Articles 43 to 47. The remainder of section 2 of chapter III of the Regulation, Articles 48 to 52, deals with miscellaneous points that do not arise in this case, other than in relation to Article 48, to which I will revert in due course.

12. Although the Regulation was recast in the form of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2012] OJ L351/1 ("the Recast Regulation"), under article 66(2) of the Recast Regulation the Regulation continues to apply to judgments entered into prior to 10 January 2015, which is the case for all three of the Italian Judgments. Accordingly, I do not need to consider the Recast Regulation.

13. The *ex parte* stage of registration is intended to be no more than a check of the documents. Recital 17 of the Regulation makes this clear:

> "(17) By virtue of the … principle of mutual trust [in the administration of justice in the Community], the procedure for making enforceable in one Member State a judgment given in another must be efficient and rapid. To that end, the declaration that a judgment is enforceable should be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility for the court to raise of its own motion any of the grounds for non-enforcement provided for by this Regulation."

14. Under article 41 of the Regulation the party against whom registration is sought is not entitled to make submissions on the application. Article 41 also provides that the judgment to be registered shall be declared enforceable immediately upon the completion of the formalities in Articles 53 and 55, without any consideration of the grounds under Articles 34 and 35 of the Regulation on which the registration of a judgment may be appealed.

15. The formalities are:

    i) under Article 53(1), the production of an authentic copy of the judgment to be enforced;

    ii) under Articles 53(2) and 55(1), the production of a certificate of enforceability issued by the member state where the judgment was given using the standard form in Annex V to the Regulation ("an Annex V Certificate") or an "equivalent document", provided that if the relevant court or competent authority considers that it has "sufficient information" before it as to enforceability, it can dispense with the requirement for the Annex V Certificate or equivalent document; and

    iii) under Article 55(2), where the registering court or competent authority so requires, the production of certified translations of the documents submitted in support of the application.

16. The order effecting the registration of the judgment constitutes the declaration of the enforceability of the judgment referred to in Chapter III of the Regulation. In this case, that is the Order.

17. Schedule 1 to the Civil Jurisdiction and Judgments Order 2001 provides that a judgment registered under the Regulation shall, for the purposes of its enforcement, be of the same force and effect as a judgment given by an English court. As Professor Briggs points out (*Briggs CJJ* at footnote 269), this equivalence is limited to the basis for measures to enforce the judgment. For other purposes, a foreign judgment registered under the Regulation does not necessarily have the same legal consequences as an English judgment.

18. Article 42 introduces the *inter partes* stage of the registration process by requiring the party against whom enforcement is sought to be served with a copy of the declaration of enforceability, together with a copy of the relevant judgment, if not already served on that party. Article 43 permits either party to appeal against the decision on the application for a declaration of enforceability. The appeal must be lodged within one or two months of service of the declaration, depending on where the party against whom enforcement is sought is domiciled. In this case the one-month period applied, although nothing turns on that.

19. Under Article 45(1) of the Regulation, the only grounds on which an appeal may be brought are those set out in Articles 34 and 35 of the Regulation, which are the grounds on which recognition of a judgment may be refused. Professor Briggs states (*Briggs CJJ* at page 672):

> "[Article 45(1)] cannot be read literally. After all, if the appellant were not entitled at this stage to submit that the judgment is not within the domain of the Regulation at all, or that he is protected from enforcement by a bilateral treaty to which Article 72 refers, or on any other ground is not within the ambit of this rule, it must come up at this point or not be raised at all. It follows that all grounds and every ground of opposition to the enforcement of the judgment may be raised at this stage, though, of course, the substance of the judgment may not be reviewed. Article 45(1) must be taken to be referring to grounds which are internal to and expressly provided by the Regulation for judgment which fall within its scope, and not those which go to define its outer edges."

20. Professor Briggs in the passage above from *Briggs CJJ* says that "all grounds and every ground of opposition to the enforcement of the judgment may be raised at this stage", other than grounds requiring a review of the substance of the judgment. In a more recent work, *Private International Law in English Courts* (2014), in a passage dealing with the same provisions of the Regulation, Professor Briggs provides some further examples of the types of objection that may be raised beyond those in Articles 34 and 35 of the Regulation:

> "It is provided [in Article 45(1) of the Regulation] that the order can be refused or revoked only on the grounds specified in Articles 34 and 35 of [the Regulation], but this cannot be

> quite right. A court hearing the appeal must be entitled to conclude that the judgment was not given in a civil or commercial matter, or was for a periodic payment which had not been quantified, or was of a measure which should not have been granted because it did not fall within Article 31 [which deals with provisional, including protective, measures], or in respect of which there was a bilateral treaty providing for non-recognition. If Article 45 directs the court to ignore all such facts and matters, it cannot be taken to mean what it says."

21. Other possible grounds of objection would be that:

    i) the judgment is not enforceable in the Member State in which it was given; and

    ii) the applicant is not an "interested party" for purposes of Article 38(1) of the Regulation.

22. The requirement in Article 55(1) that the applicant provide an Annex V Certificate, an "equivalent document" or other "sufficient information" in respect of enforceability is, of course, intended to forestall objection (i) arising in the vast majority of cases. Mr Percival says that objection (i) arises in this case in relation to the Tribunal Judgment and the Italian SCC Judgment because no Annex V Certificate was produced, there was no equivalent document and the Master did not have sufficient information on which he could properly conclude that he could dispense with the requirement for an Annex V Certificate or equivalent document. I will return to the question of whether the applicant is an "interested party" in due course.

23. Professor Briggs's view as to the proper interpretation of Article 45(1) of the Regulation is supported by the following passage in *Dicey, Morris and Collins on the Conflict of Laws* (15th edition 2012) at paragraph 14-240:

> "According to Art.45(1), the appeal against registration may only be founded on the grounds listed in Arts 34 and 35, but this must be an error on the part of the drafters: an appellant must be entitled to question whether the judgment falls within the scope of the Regulation …, or that the provisions of some other law or international treaty preclude its recognition."

24. Article 36 of the Regulation provides that "[u]nder no circumstances may a foreign judgment be reviewed as to its substance." It is common ground that the objections raised by Mr Percival to the registration of the Italian Judgments do not fall within the scope of Articles 34 and 35. Motu Novu maintains that some of Mr Percival's grounds go beyond the permissible scope of objections to registration, even bearing in mind the passages quoted above from *Briggs CJJ* and *Dicey, Morris & Collins*, which I understand are not disputed by Motu Novu.

Procedural history

25. On 20 March 2018 the respondent applied to the High Court to register the Italian Judgments under chapter III of the Regulation. The matter came before Master Cook

to consider on the papers in accordance with the normal procedure, and he made the Order on 12 April 2018.

26. Mr Percival was served with the order on 25 April 2018, and he filed his Appellant's Notice on 25 May 2018.

27. Mr Percival also filed an application dated 16 May 2018 for the Order to be set aside. On 18 June 2018 Master Cook vacated the hearing of the application, which had been listed for 19 June 2018, on the basis that the matter was proceeding as an appeal under CPR Part 52.

28. On 8 June 2018 Mr Percival applied to amend his Grounds of Appeal. That application was granted by May J by order dated 21 June 2018.

29. On 25 July 2018 the court approved a consent order adjourning the hearing of the appeal originally listed to take place on 26 or 27 July 2018 in order to allow Motu Novu to adduce further evidence. Motu Novu applied on 14 January 2019 for permission to rely on the witness statements of Mr Alberto Spangaro dated 25 September 2018 as to matters of Italian law and of Mr Michael Bonner dated 20 September 2018 as to matters of Massachusetts law. Exhibited to Mr Spangaro's witness statement was an Annex V Certificate dated 2 July 2018 in respect of the CA Milan Judgment. By order dated 25 January 2019 Cheema-Grubb J granted permission to Motu Novu to rely on those witness statements.

30. In its application of 14 January 2019 Motu Novu had also sought permission to rely on an Affirmation of Assignment of Rights of Judgments dated 5 December 2018 ("the 2018 Affirmation"), a document governed by Massachusetts law, in which Mr Enrico Teruzzi and Ms Carmen Puthod purported to confirm that at the time Mr Teruzzi executed the 2011 Assignment he was in a position to transfer all right, title and interest in and to the Italian Judgments, including the interests of Ms Puthod and La Fattoria. Cheema-Grubb J in her order of 25 January 2019 deferred that question to be considered at the hearing of the appeal.

Amended Grounds of Appeal

31. Mr Percival's Amended Grounds of Appeal ("the Grounds") are, in summary:

    i) The Master erred in making the Order as the documentation filed in support of the application did not satisfy the requirements of the Regulation. There was no Annex V Certificate as required by Article 53(2) nor any "equivalent document" or other "sufficient information" as required by Article 55(1) of the Regulation.

    ii) To the extent the Master exercised a discretion to make the order notwithstanding the lack of an Annex V Certificate, equivalent document or other sufficient information, he was wrong to do so.

    iii) The Master was wrong to register the Italian Judgments "in full". Motu Novu, as assignee of Mr Enrico Teruzzi, is "entitled to enforce only its one-third share of the Italian Judgments".

iv) The Master was wrong to register the Tribunal Judgment, as it was overturned in part by the CA Milan Judgment.

v) The Master was wrong to register the Italian SCC Judgment as Motu Novu has not been assigned any right in respect of that judgment and is not entitled to enforce it.

vi) For the foregoing reasons, the Master erred in awarding Motu Novu its costs of the application for registration in the sum of £2,500 plus £66 in court fees. Mr Percival seeks a costs order in his favour in respect of the proceedings before Master Cook, including the costs of his application to set aside the Order.

Ground (i) and (ii): failure to comply with Articles 53 and 55 of the Regulation

32. I can take Grounds (i) and (ii) together. The principal submissions made by Mr Philip Ahlquist of counsel for Mr Percival were, in summary:

i) Motu Novu failed to provide an Annex V Certificate. Master Cook made no direction dispensing with that requirement. The Order does not record that he considered the issue, and therefore Mr Percival cannot know whether the Master failed to consider the requirement or, if he did consider it, on what basis he concluded that he could dispense with the need for the Annex V Certificate, for example, whether he considered that he had an "equivalent document" or "sufficient information" or simply had a discretion to dispense with the requirement if he thought appropriate.

ii) If the Master failed to consider the issue, then he erred in law in making the Order. If he considered it appropriate to dispense with the requirement, he was wrong to do so. He had neither an equivalent document nor sufficient information as to enforceability so as to justify dispensing with the requirement.

iii) There was no proper evidence before Master Cook that Motu Novu could enforce the Italian Judgments or any of them. The requirement that an Annex V Certificate or equivalent document be provided by the applicant for registration of a foreign judgment is essentially the only safeguard protecting judgment debtors from having unenforceable judgments registered against them.

iv) To the extent that the Master considered it appropriate to dispense with the requirement of an Annex V Certificate or equivalent document on the basis that he had "sufficient information" or he purported to exercise a discretion to dispense with the requirement, he was wrong to do so.

33. The principal submissions made by Ms Elaine Palser of counsel for Motu Novu were, in summary:

i) This is not an appeal in the ordinary sense. It is only at this stage that the objections to the order are considered. It would therefore be wrong to set aside the Order on the basis of what Master Cook may or may not have considered.

The court must now consider whether the Order should stand, be revoked or be amended on the basis of the evidence and information before the court, including the Annex V Certificate dated 2 July 2018 in relation to the CA Milan Judgment.

ii) In any event, Master Cook did have sufficient information before him, it must be assumed that he considered the question of the sufficiency of the information he had before him, and he was entitled to dispense with the Annex V Certificate or equivalent document. The Master had all three Italian Judgments before him, which collectively tell the full story. There is no question of Motu Novu attempting to recover more than the single judgment debt, plus any costs associated with the other two Italian Judgments. The CA Milan Judgment had an Italian enforceability formula annexed, which is itself the basis for obtaining the Annex V Certificate. There is evidence on which Master Cook could have concluded that he was dealing with enforceable judgments.

iii) There is now an Annex V Certificate in respect of the CA Milan Judgment, so at the very least the Order should be upheld in relation to that judgment. It would not be efficient or in keeping with the spirit of the Regulation to remit the matter to Master Cook to be re-determined or for Motu Novu to be forced to apply again.

34. In my judgment, Master Cook was entitled to form a view at the time of Motu Novu's original application, on the basis of the evidence presented to him, as to the authenticity of the Italian Judgments and as to whether he had sufficient information to justify dispensing with a requirement for an Annex V Certificate. The registration is intended to be a straightforward verification of documentation. It is not disputed that the Italian Judgments are authentic. I am not persuaded that the Master was clearly wrong to conclude that he had sufficient information to justify dispensing with the requirement of an Annex V Certificate.

35. Mr Ahlquist submitted that the Order did not record that Master Cook had considered the issue of whether he could dispense with the requirement of an Annex V Certificate, and therefore we cannot determine whether he considered the issue and, if so, on what basis he determined that he had "sufficient information" justifying dispensing with the Annex V Certificate. I do not consider that Master Cook is required by Article 55(1) to give reasons for dispensing with the production of an Annex V, and I reject Mr Ahlquist's submission that there was no "proper evidence" before the Master enabling him to reach that view. It must be the case that something short of an Annex V Certificate or equivalent document will suffice in certain circumstances, otherwise the reference to "sufficient information" in Article 55(1) would be otiose. It was a matter for the judgment of the Master registering the judgment. If a Master errs in their determination of whether there is "sufficient information", the respondent has the opportunity at the *inter partes* stage to raise their objection.

36. Mr Percival also disputes that Motu Novu has more than a one-third interest in the judgment debt represented by the CA Milan Judgment, as I discuss further in connection with Grounds (iii), (iv) and (v) of his appeal.

37. The purpose of the two-stage process is to permit the respondent to raise objections to the registration at the second stage. I accept that those objections must necessarily be capable of going beyond the grounds in Articles 34 and 35 of the Regulation, as noted by Professor Briggs in his works to which I have referred and in *Dicey, Morris & Collins*.

38. We are now at the second stage, and therefore the questions are, in effect, whether I consider there is any merit in any of the objections raised by Mr Percival and, if so, what the appropriate remedy should be. I will answer those questions after considering the remainder of Mr Percival's objections. I agree with Ms Palser that this is not an ordinary appeal under CPR Part 52.

Grounds (iii), (iv) and (v): the Master was wrong to register all three Italian Judgments

39. I can take Grounds (iii), (iv) and (v) together. Mr Ahlquist's principal submissions for Mr Percival are, in summary:

    i) The CA Milan Judgment is the only enforceable judgment. This is agreed by the Italian law experts for Motu Novu and Mr Percival. The Master was therefore wrong to register the Tribunal Judgment and the Italian SCC Judgment.

    ii) The CA Milan Judgment is not enforceable by Motu Novu for more than a one-third share. Motu Novu has not established any right to enforce it in full. The evidence of Mr Parlatore, the appellant's Italian law expert, confirms that, for reasons of Italian law, the 2011 Assignment is not effective to have transferred to Motu Novu more than Mr Enrico Teruzzi's personal one-third interest in the CA Milan Judgment, arguably excluding his one-third interest in costs awarded in relation to the Italian SCC Judgment, which post-dates the 2011 Assignment. The 2018 Affirmation, again for reasons of Italian law, was not effective to cure the failure of the 2011 Assignment effectively to assign to Motu Novu more than Mr Enrico Teruzzi's personal one-third share of the judgment debt.

    iii) Where a judgment creditor is entitled to enforce only part of a foreign judgment, that must be made clear in the order declaring the judgment to be enforceable in this jurisdiction. That is the necessary effect of Article 48(1) of the Regulation. The Master failed to do that in this case. Article 48(2) permits an applicant seeking registration of a foreign judgment to request a declaration of enforceability limited to parts of a judgment.

40. Ms Palser's principal submissions for Motu Novu were, in summary:

    i) Although it is accepted that the CA Milan Judgment is the only substantive judgment, the costs components of the Tribunal Judgment and the Italian SCC Judgment are enforceable through the CA Milan Judgment, as confirmed by the expert evidence of Italian law. As non-substantive judgments, no Annex V Certificate is required in relation to either of them. Motu Novu's Italian law expert, Mr Spangaro, confirmed that Motu Novu was prudent to register all three judgments, given their interlinkage.

ii) As to the argument that Motu Novu is entitled to enforce only one third of the judgment debt, that issue does not arise at this stage, the registration stage, but only when Motu Novu comes to enforce the judgment. The court should not be engaging in substantive issues of Italian or Massachusetts law as to whether the CA Milan Judgment (and/or either of the others) are enforceable as to a third or in full. Article 45(2) of the Regulation prohibits the review of the foreign judgment to be registered as to its substance, yet that is what Mr Percival is seeking to do.

iii) If that is wrong, it is clear that the right, title and interest in the Italian Judgments is vested in Motu Novu in full. The original claimants have confirmed this to be the position in the 2018 Affirmation. The 2018 Affirmation is clear on its face and does not require interpretation by a Massachusetts lawyer.

iv) There is nothing in the Annex V Certificate that says each claimant is only entitled to a one-third share of the judgment debt. One should proceed on the basis that the CA Milan Judgment is enforceable in full, with the other claimants entitled to seek their share from the one who has enforced the judgment.

41. In my view, with the benefit of hindsight, it is clear that the only Italian Judgment that should have been registered by Master Cook is the CA Milan Judgment. That is because it is the only judgment that is enforceable under Italian law. Article 38 of the Regulation is limited to judgments enforceable in the Member State in which they are given, and therefore the Tribunal Judgment and the Italian SCC Judgment, which on the agreed Italian law expert evidence are not enforceable in Italy, are not eligible for registration.

42. In saying this, however, I am not criticising the Master for registering all three Italian Judgments. I have given my reasons for concluding that he was entitled to reach a view on whether there was sufficient information to dispense with the requirement of an Annex V Certificate or equivalent document. I have no reason to doubt that he considered the issue, and I have found that he had evidence on which he could conclude that he had sufficient information. He appears to have accepted the position that it was necessary to register all three Italian Judgments so that the full extent of the judgment debt, including costs, was reflected.

43. There was no error of law or approach by the Master, bearing in mind the limited nature of the exercise he was tasked with carrying out. The purpose of this second *inter partes* stage is to address any objections raised by the respondent and, if necessary, make any corrections. I will revert to the question of remedy in a moment.

44. I reject the contention made on behalf of Mr Percival that anything in the Regulation, or otherwise, limits an applicant's registration of a foreign judgment to the proportion to which he is entitled. I have seen no authority for that proposition. It is not supported by the commentaries of Professor Briggs or by *Dicey, Morris & Collins*. All that is required is that the applicant should be an "interested party".

45. The term "interested party" is not defined in the Regulation, but a person who is the assignee of a named judgment creditor, even where there are other named judgment

creditors, is clearly an interested party. It seems to me fundamentally incompatible with the deliberately limited and mechanical nature of the registration process under chapter III of the Regulation that the registering court or competent authority should be required to enquire into the nature and extent of an applicant's interest in a judgment, beyond what is necessary to establish *prima facie* that the applicant is an interested party.

46. I also do not accept Mr Ahlquist's submission that Article 48 supports the contention that the Master should have reflected on the face of the Order that Motu Novu had only a one-third interest in the judgment debt, assuming that the Master had accepted Mr Percival's position on that point. Article 48 is concerned with severability and allows an applicant to seek to register the enforceable part of a foreign judgment, provided it is severable, in a case where some other aspect of the judgment is not enforceable in the registering member state under the Regulation because, for example, it is of a revenue nature and therefore outside the material scope of the Regulation.

47. It follows from the foregoing analysis that I do not need to reach a view on the conflicting contentions of the parties as to the scope and effect of the 2011 Assignment and, to the extent that I permit Motu Novu to rely on it, the 2018 Affirmation. As to Motu Novu's application to rely on the 2018 Affirmation, having considered it *de bene esse*, its intended effect is, in my view, a relevant part of the factual background and so, to that extent, I permit Motu Novu to rely on it. Beyond that, I express no opinion on its content or effect and do not need to rely on it, for the reasons I have given.

48. It also follows from my analysis that I do not need to resolve the dispute referred to in the last sentence of [6] above.

Remedy

49. Leaving aside, for the moment, the question of the costs of the original application seeking the Order and the related set-aside application raised by Ground (vi), I need to consider the appropriate disposal of this matter in light of my conclusions on the first five Grounds. I have already noted that I do not consider that the Master was required to record his reasons for dispensing with the requirement for an Annex V Certificate or equivalent document. Any such requirement would be incompatible with the clear intention of the Regulation that it be a straightforward and essentially mechanical exercise in verifying documents.

50. I make two further observations. First, if the Master had recorded brief reasons in his Order for his decision to dispense with the requirement, it would have helped to limit the issues arising at this second stage. Secondly, it was open to him to reject the application for lack of an Annex V Certificate or to make a conditional order requiring the applicant to provide the Annex V Certificate by a specified date. Had he done so, the issues at this second stage would, again, have been limited, saving time and cost at the second stage. I say no more than this. Ultimately, it is a matter for the judgment of the Master considering the application.

51. Having decided that, with the benefit of hindsight, the Tribunal Judgment and the Italian SCC Judgment should not have been registered, the clear remedy is for me to

vary the Order to limit it to the CA Milan Judgment. I have the power to do so, and it is clearly the appropriate and cost-effective course, bearing in mind the nature of this two-stage process and the fact that this is not a conventional appeal under CPR Part 52. There is no reason why the matter should be remitted to the Master and/or for the Order simply to be set aside and Motu Novu required to apply again to register the CA Milan Judgment.

52. Finally, I agree with the submissions made by Ms Palser on behalf of Motu Novu that, having surmounted the hurdle of establishing that it is an interested party for purposes of article 38 of the Regulation, it is neither necessary nor appropriate to deal with the question of the nature and extent of Motu Novu's interest in the judgment debt represented by the CA Milan Judgment. It is neither necessary nor appropriate at this stage to enquire into the effectiveness of the 2011 Assignment and/or the 2018 Affirmation, both as to Italian law, to the extent relevant, as well as to Massachusetts law. Any such enquiry can be dealt with post-registration, when Motu Novu comes to enforce the judgment, to the extent that there is any merit in any such objections.

53. To deal with these issues at this second stage of the registration process would clearly be incompatible with the deliberately limited nature of this process under the Regulation. I do not accept Mr Ahlquist's contention that the second stage provides the only opportunity for Mr Percival to raise any objections he has to enforcement of the CA Milan Judgment.

54. Paragraph 5 of the Order recites that by the 2011 Assignment Mr Enrico Teruzzi legally assigned all of his rights, title and interest in the CA Milan Judgment to Motu Novu. It is a matter, to the extent it remains in dispute now or in the future, for another occasion whether all of Mr Teruzzi's rights, title and interest in the CA Milan Judgment included the rights, title and interest of his co-claimants or, if it did not, whether the transfer of those rights, title and interest to Motu Novu was successfully effected on a subsequent occasion, pursuant to the 2018 Affirmation, or otherwise.

Costs of the original application, the set-aside application and this appeal

55. As to costs, I will consider any submissions on costs that the parties may wish to make, but it may be helpful to indicate my preliminary views. Given that Mr Percival has succeeded in part on this appeal, it seems to me that it is appropriate that he should not be required to pay the costs of the original application and registration fee, as provided in paragraph 9 of the Order. I do not, however, consider it appropriate to award Mr Percival his costs in relation to his set aside application referred to at [27] above.

56. Mr Percival has, however, raised a number of substantive objections to the enforcement of the Order that I have had to consider, that each party has been required to make submissions on and that I have not accepted. I also consider it relevant to the costs position that Mr Percival's objections to the registration of the three Italian Judgments are purely technical.

57. Mr Percival has not suggested that Motu Novu is attempting to recover more than the single judgment debt which, it is now accepted, is wholly enforceable through the CA Milan Judgment, together with relevant costs. He also does not deny that the CA Milan Judgment is enforceable. He objects to the Master having registered the CA

Milan Judgment before the Annex V Certificate was produced. He is, of course, entitled to take a technical objection of this type, provided that it is arguably correct, to the enforcement of a judgment debt that he does not, in substance, dispute, but it is not an attractive position.

58. Although I have not considered it necessary, for the reasons I have given, to express a view on Mr Percival's contention that Motu Novu is only entitled to a one-third share of the judgment debt, it is clear, having regard to all of the evidence and given the close interrelationship of the three original judgment creditors, that the intention was to transfer the entirety of the judgment debt to Motu Novu, whatever technical defects there may have been in doing so as a matter of Italian law. It seems to me that I am entitled to take this into account in considering the appropriate costs order.

59. I bear in mind that Mr Percival agreed to an adjournment of this appeal hearing to allow Motu Novu to gather additional evidence, as I noted at [29] of this judgment. That accommodation is a point in his favour in relation to costs.

60. Overall, I am inclined to set aside paragraph 9 of the Order and otherwise to make no order as to costs. I make these observations so that each party can address them in any submissions on costs they wish to make.

Form of the order

61. I would be grateful for the parties to agree a form of order to give effect to this judgment. The order will vary the terms of the Order so that the Tribunal Judgment and the Italian SCC Judgment are referred to in the recitals of the order, but the only judgment registered is the CA Milan Judgment. Paragraphs 4 and 5 of the Order should be preserved. Paragraph 9 of the Order is, as already noted, provisionally to be set aside.

62. If a form of order cannot be agreed, I will, of course, consider submissions on the form of order.