Neutral Citation Number: [2023] EWHC 839 (Ch)

Case No: PT-2022-000177

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (CH)

Royal Courts of Justice
Rolls Building, London EC4A 1NL

Date: 14/04/2023

Before :

DEPUTY MASTER BOWLES

- -

Between :

Gleema Nambiar	**Claimant**
- and -	
Georges Emile Karam	**Defendant**
-and-	
Mona Achkar	**Third Party**

- -
- -

James Pickering KC (instructed by **Berkeley Rowe Solicitors**) for the **Claimant**
Alexander Goold (instructed by **Summit Law LLP**) for the **Defendant and Third Party**

Hearing date: 20 January 2023

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Judgment Approved by the court for handing down

Deputy Master Bowles:

1. In these proceedings the Claimant, Gleema Nambiar, seeks the recognition and enforcement, against the Defendant, her ex-husband, Georges Emile Karam, of a judgment of the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida USA, dated 19 October 2018 (the Florida judgment). Although certain aspects of the judgment were the subject of an appeal, that appeal was dismissed on 1 April 2020.

2. The judgment in question was given in divorce proceedings brought by the Claimant against the Defendant and provided, among other things, for the dissolution of their marriage. The Defendant had, himself, issued divorce proceedings, in Lebanon. Those proceedings were, initially, dismissed by the Lebanon court, on grounds of jurisdiction. An appeal against that decision, albeit, I am told, still subject to a further appeal, by the Claimant, was, however, successful. On 24 October 2019, the appeal court, in Lebanon, reversed the decision of the lower court, declared the divorce of the parties and rejected the Claimant's request for a division of, or share in, the Defendant's assets in Lebanon. It is a question, in the current proceedings, as to whether, that judgment (the Lebanon judgment) went further and was, in respect of the matters in issue in these proceedings, inconsistent with the Florida judgment and, if so, which judgment should be recognised and enforced by this court.

3. The Florida judgment provided that the Defendant should make a lump sum payment of $895,915.46 to the Claimant, together with a payment in respect of attorney's fees and costs of $205,107.18. It further provided that the Defendant should pay alimony to the Claimant in the monthly sum of $9,432.82, payable until death, or remarriage.

4. The Florida judgment also made provision as to the ownership of a property in London, Flat 47 Westminster Mansions, Little Smith Street, London SW1P 3DQ (the London Property).

5. As to the London Property, the Florida judgment provided, at pages 14 and 15 of the judgment, as follows:

> 'the Wife is hereby awarded the London flat … in fee simple absolute, outright, free and clear of any and all claims of the Husband.
>
> This Final judgment shall have the effect of a duly executed instrument of conveyance, transfer, release, or acquisition of the above referenced London flat …. The title of the marital residence is hereby vested in the Wife. The Wife is hereby one hundred per cent owner of the London flat. The Wife is entitled to exercise all rights as owner including a right of occupation.
>
> The Husband's entire interest in the London flat is hereby extinguished. The Husband is hereby restricted from exercising any powers to further encumber, occupy, transfer, or otherwise deal with the London flat in any manner except to transfer the property to the Wife as set forth herein. The Husband is hereby ordered and compelled to take any and all steps reasonably necessary in order to transfer the title of the London flat to the Wife as set forth herein, immediately.'

6. The judgment further provided that if the London Property had not been transferred to the Wife 'after five months from the date of the Final Judgment, then at the Wife's option the London flat shall be sold … with the totality of the net sales proceeds transferred directly to the Wife as a defined lump sum'.

7. At page 25 of the Florida judgment, the court, '(b)ased on the foregoing … ORDERED AND ADJUDGED ….4. … One hundred per cent (100%) of the Husband's interest in the parties' former marital residence and the London flat' to be 'hereby transferred to the Wife in fee simple absolute' and that (t)his Final Judgment has the effect of a duly executed instrument of conveyance, transfer, release, or acquisition of the above referenced marital residence and London flat.'

8. These proceedings were issued, by way of a Part 8 Claim, in the Queen's Bench Division, on 4 March 2021. The Details of Claim and the witness statement supporting the Claim sought recognition of the Florida judgment transferring ownership of the London Property to the Claimant, so that her ownership of the London Property could be registered at HM Land Registry and so that she could seek possession of the London Property. The Claimant, by way of enforcement of the Florida judgment, also sought payment of the money sums awarded to her by the Florida judgment.

9. There was no immediate response to the Claim and, by application dated 8 June 2021, the Claimant applied for summary judgment and for permission to proceed with that application notwithstanding the absence of any acknowledgement of service. It is that application, conjoined with a further summary judgment application, dated 6 December 2022, and issued in the circumstances set out later in this judgment, to which this judgment relates.

10. The 8 June 2021 application seems to have stirred the Defendant into life. An acknowledgement of service was served, out of time, on 28 June 2021, asserting that the Florida court did not have jurisdiction over the Defendant. That assertion was supplemented by a purported Defence and Counterclaim, dated 23 July 2021. The Defence and Counterclaim asserted the primacy of the Lebanese judgment, the alleged unenforceability of the Florida judgment, in Florida, by reason of the Lebanese judgment, and the further unenforceability of the Florida judgment, in respect of the London Property, as being a judgment which purported to give judgment in rem over, or in respect of, immovable property situated in England and Wales.

11. The application for summary judgment came before Master Davison, in the Queen's Bench Division, on 21 November 2021. There was also before the court an application by the Defendant contesting the court's jurisdiction, for lack of good service, and, also, it would appear, an application for an extension of time, in respect of the late acknowledgement of service. At that hearing, the Defendant withdrew his application in respect of jurisdiction and agreed that there had been sufficient service of the Claim. Permission was granted for him to participate in the proceedings and time for his acknowledgment of service was correspondingly extended.

12. Materially to the current application, in a witness statement dated 8 November 2021, and served prior to the hearing before Master Davison, the Claimant asserted, in terms, that her purpose in bringing proceedings was not to claim the unpaid monetary elements of the Florida judgment, but to effect the transfer of the London Property to herself. It is the Defendant's contention, elaborated, skilfully, in argument, by his

counsel, Mr Goold, that this, as he puts it, concession, by the Claimant, is not one from which she should now be allowed to resile.

13. Although no formal application was before Master Davison, on 21 November 2021, an element of the Defendant's evidence, before the Master, was that the London Property had not, at the date of the Florida judgment been, in the beneficial ownership of the Defendant, but that, since 24 June 2015, the London Property had been beneficially owned by the Third Party, the Defendant's mother, Mona Achkhar.

14. In light, it would appear, of that evidence, the Master directed the transfer of the proceedings to the Chancery Division, that the summary judgment application be heard by a Master in the Chancery Division and that the Third Party, as she now is, make such application, in these proceedings, as she saw fit, in respect of her claim to the London Property. In reflection of the issues advanced by the Defendant, provision was also made for the parties to adduce and rely upon expert evidence in respect of Florida law.

15. Further directions were given in the Chancery Division, upon 2 August 2022 and 22 November 2022.

16. At the August hearing, directions were given for a meeting of experts and for those experts to prepare a statement setting out the matters upon which they agreed and disagreed. That statement was lodged on 31 October 2022. I will refer to some aspects of that statement later in this judgment. A recital to the August directions order noted, as already set out, that it was a 'live' issue between the parties as to the extent, if at all, that the Claimant could seek to enforce her money claims, as part of the 8 June 2021 application.

17. At the November 2022 hearing, Mona Achkar was joined as Third Party, the Claim was directed to proceed under Part 7 CPR and, pursuant to that direction, all parties were to serve Statements of Case. The 8 June 2021 application was directed to be heard on 20 January 2023.

18. Statements of Case have now been served by all parties, including the Third Party, although, because of the tight time scale adopted in the November 2022 directions order, it has been necessary for all parties to seek short extensions, in respect of service of their respective Statements of Case, together with relief from sanctions. Neither the extensions nor the relief were in contest and, accordingly, at the commencement of the hearing on 20 January 2023, all necessary extensions and corresponding relief from sanctions were granted.

19. The Claimant's Particulars of Claim, dated 7 December 2022, now sought a declaration that the Claimant 'is due the Defendant's equitable interest in (the London Property)' up to the value of $1,704,723.12; judgment in that sum; recognition and enforcement of the (Florida judgment), transferring ownership of the London Property to the Claimant; interest and costs. The sum of $1,704,723.12 was said to be made up $603,700.48 unpaid alimony to the date of the Particulars of Claim; the lump sum payment of $895,915.45, pursuant to the Florida judgment; and $205,107.19 legal costs, pursuant to that judgment. The limitation upon the extent of the equitable interest in the London Property sought to be declared in the Claimant's favour was not explained in the pleading and is discussed later in this judgment.

20. In response to that pleading, the Defendant, by amendment to his original Defence, contended (a) that he had, at the date of the Florida judgment and has now, no beneficial interest in the London Property; that beneficial interest being vested solely in the Third Party; (b) that the Florida court did not have jurisdiction over the London Property; (c) that the lump sum awarded to the Claimant by the Florida court had been determined contrary to Florida law and, when coupled with the transfer to the Claimant of the London Property, gave rise to a double recovery that this court should not enforce; (c) that, to the extent that the Lebanon judgment contradicted the Florida judgment, the Florida judgment should not be enforced; (d) that the Florida judgment, as it relates to the London Property, would not be enforceable in the Florida court and, being a purported judgment in rem over immovable property situated in England and Wales, is not a judgment that the courts of England and Wales will enforce; (e), as already foreshadowed, that the Claimant, having intimated that she was not seeking monetary relief in these proceedings should not be allowed to resile from that position, both in respect of the summary judgment application and in respect of the litigation as a whole.

21. Notwithstanding those contentions, on 22 December 2022, the Claimant issued a further summary judgment application, dated 6 December 2022. That application was not, however, served until 6 pm on Friday 6 January 2023 and, accordingly, not deemed served until 9 January 2023. It was only on 12 January 2023 that the Defendant was informed that the application was to be listed with the June 2021 application, on 20 January 2023. The preliminary point is, therefore, taken that the Defendant has not had the relevant notice for an application under CPR 24.

22. The application, itself, is described, on its face, as a reiteration of the 8 June 2021 application, particularised in accordance with the new pleadings. It asserts that the application raises no issues not already known to the parties and seeks all the relief set out in paragraph 19 of this judgment.

23. I am satisfied that the new application raises no issues which were not substantially in play between the parties in respect of the original, June 2021, application and, specifically, that the Defendant has not been taken by surprise by the new application, or materially prejudiced by the new application. In those circumstances, I propose to abridge time in respect of the new application and to trat this judgment as relating to both applications.

24. Unsurprisingly, there was no debate, or dispute, between the parties as to the well-established principles applicable to an application for summary judgment. In particular and relevant to the matters raised in this case, it was not in contest but that where an application, or an aspect of an application, turns upon a point of law, or construction, the court can and, if it can, should resolve the point in issue, one way or the other.

25. The exercise of that jurisdiction is, of course, dependent upon the parties having had a proper opportunity to address the point and upon the availability of the necessary evidence. Where there is evidence that material relevant to and bearing upon the point in question, while not currently available, will realistically be available at a trial, it would not be appropriate to exercise the jurisdiction, since that material might realistically affect the outcome. Where there is no such evidence, then, as with all applications for summary judgment, the argument, or submission, that a claim should go to trial because relevant evidence, bearing upon matters in issue, might turn up, will not suffice and will not preclude the court from giving summary judgment.

26. In this case, it has not been suggested, other than in respect of the putative interest of the Third Party in the London Property, that there is any expectation that there will be evidence at trial going beyond that which is currently before this court.

27. In regard to the London Property it is accepted by the Claimant that the Third Party is not bound by the Florida judgment and further that the determination of the existence, or the extent, of the Third Party's interest in the London Property raises issues of fact not suitable for determination upon this application.

28. The Third Party relies upon an unregistered TR1, dated 24 June 2015, and a trust deed, dated 28 February 2017, as transferring the beneficial interest in the London Property in her favour. The Claimant denies the authenticity of those documents and asserts that, to the extent that they are, or may be authentic, they do not reflect the true arrangements, as between the Defendant and his mother, and constitute a 'sham'.

29. Be that as it may, it is, necessarily, accepted, by the Claimant, on these applications, that any order made, pertaining to the London Property, must respect the fact that the Third Party's interest in that property is at large,

30. The recognition and enforcement, or otherwise, of the Florida judgment is a matter for determination by this court, by way of action on the judgment, and by application, in respect of the judgment, of well-established common law principles. In broad terms, this court will, as a matter of obligation, recognise and enforce a final judgment of a court of competent jurisdiction, provided that that court had jurisdiction to give that judgment, according to the principles of conflict of laws applied in and by the courts of England and Wales and provided that the judgment is not otherwise impeachable on grounds of fraud, or public policy.

31. In this case, no issues of fraud, or public policy arise and it is not in dispute but that the Florida judgment is a final judgment given by a court of competent jurisdiction. Subject, therefore, to the question as to whether, in this litigation and upon these applications, the Claimant has limited herself to non-monetary relied, and the separate question as to the approach to be taken by this court to the Florida judgment, if and to the extent that it conflicts with the Lebanon judgment, the issue for this court, on these applications, is whether and to what extent there exist realistic grounds, applying what I will call English law principles of conflict of laws, such that the Florida judgment should not be recognised and enforced.

32. In regard to those principles, a number of the Defendant's pleaded positions can be dealt with in short order and were either not argued, or only thinly argued, by Mr Goold, for the Defendant, in the course of his careful and persuasive submissions.

33. In particular and given the agreed findings of the parties' Florida law experts, it is not now in contention but that the Florida court had both personal and subject matter jurisdiction in respect of the Defendant, including in respect of the London property, and, therefore, that there is no jurisdictional reason, pertaining to the proceedings in Florida, such as to preclude this court from recognising or enforcing the Florida judgment.

34. Likewise, because English law principles of conflict of laws do not permit the re-examination of a decision of a foreign court on the merits, the contention, that the lump

sum awarded to the Claimant by the Florida judgment (upheld in respect of the points taken to appeal) was wrong, in terms of Florida law, and gave rise, so it was suggested, when coupled with the purported transfer of the London property, to a double recovery, was not one which could preclude recognition and enforcement of the Florida judgment, in respect of the lump sum.

35. The question of double recovery needs, in any event, to be teased out. It is clear to me that the Florida court order did not give rise to a double recovery.

36. That order, as set out at paragraphs 3 and 4 of this judgment made two separate awards in favour of the Claimant. The London property and a lump sum of $895,915.46.

37. It did so, as appears from page 9 of the Florida judgment, on the basis that the court was entitled under the relevant Florida statute to make an unequal distribution of the parties' assets, by reason of the Defendant's conduct, in regard to the litigation. The process, as appears from pages 12 to 14, of the Florida judgment, was to identify assets that the Defendant had dissipated, leaving aside the value of the London property, award the Claimant one half of that amount and, quite separately, but as part of the same process of unequal distribution, to award the Claimant the London property. There was no question of the London property, or any part of its value, being awarded twice over.

38. The suggestion, however, that there has been, or may be, an element of double recovery has, as it seems to me, given rise to a degree of confusion, on the Claimant's part, which has been reflected in the relief claimed in respect of the London property and, in particular, in the apparent limitation upon the equitable interest in the London property, identified in paragraph 19 of this judgment.

39. In that regard, Mr Pickering KC, in his skeleton submissions, submits that the purported transfer of the London property was to be a form of quasi-security for the payment of the lump sum, such that the proceeds of the London property, on realisation, would go to discharge or reduce the lump sum (and, seemingly, the other monetary payments) arising under the Florida judgment, such that, in the event that the London property fetched more than the judgment sum, there would be a return of the outstanding balance to the Defendant and such that, in the event that the proceeds did not discharge the judgment sum, the Defendant's residual liability would only be for the amount left outstanding.

40. With all respect to those who have formulated these proceedings, there is nothing at all in the Florida judgment to support this proposition. There is no suggestion in the Florida judgment that the purported transfer of the London property was anything other than an absolute transfer of that property, or that the intention of the order was that the realisation of the London property was to produce a fund for the payment of the lump sum, or other monetary payments due under the order, let alone that any surplus in the proceeds of any sale, following satisfaction of the monetary aspects of the judgment was to pass to the Defendant.

41. The judgment, as set out at paragraphs 4, 5 and 6 of this judgment could not be clearer in purporting to vest absolute ownership of the London property in the Claimant. The order provided for sale only in the event that the Defendant failed to give effect to the Florida judgment, by transferring the London property, as directed, and, in that

circumstance, directed, further, that the entire proceeds be transferred to the Claimant as an additional lump sum.

42. Be all this last as it may, the operative principle to be applied, in respect of any suggested defect in the Florida judgment, is that set out at paragraph 34 above. It is not the function of this court, in determining whether to recognise, or enforce, the Florida judgment, to re-examine, or re-open the findings of the Florida court. A foreign judgment, which, as with the Florida judgment, is final and conclusive cannot be impeached, before this court, upon the grounds that it was, in terms of its own law, erroneous in either fact or law (**Dicey, Morris and Collins on the Conflict of Laws, 16th Edition, Rule 51**). Accordingly, any defects in the Florida judgment, whether, giving rise to double recovery, or otherwise, would not and do not preclude recognition, or enforcement, in this jurisdiction.

43. A further point taken by the Defendant, in respect of the lump sum aspect of the Florida judgment, likewise, fails to afford grounds for the refusal by this court to recognise, or enforce, that aspect of the Florida judgment.

44. It is argued by the Defendant that the lump sum payment was, in the terms of **Rule 46 (1)**, in **Dicey, Morris and Collins**, a 'fine or other penalty' and, as such, not enforceable in this court.

45. The penalty point, as I will call it, has not been raised in the Defendant's pleadings. However, on an application under CPR 24, it is open to a Defendant to raise all matters which might give rise to a realistic answer to the claim and, accordingly, there is no procedural bar to the argument which has been advanced.

46. The argument, however, is a bad one and stems, with respect from a misunderstanding, or misreading, of the Florida judgment.

47. The submission that the lump sum is a penalty arises out of the fact that, at an earlier stage in the litigation giving rise to the Florida judgment, the Defendant had been found to be in 'indirect contempt' of the court and had been ordered to pay, but had not paid, what was termed a Purge Amount to purge his contempt. Unusually, to the eyes of lawyers operating in this jurisdiction, that payment, had it been made, would have been paid to the Claimant. In point of fact, as already stated, it was never paid.

48. That unpaid Purge Amount, however, has nothing whatsoever to do with the lump sum awarded to the Claimant. As set out and explained earlier in this judgment, the lump sum was awarded, not as a Purge Amount, but in the exercise of the Florida court's jurisdiction to make an unequal distribution of assets. The confusion, I think arises, because the money sum, awarded, as part of that process, was in the same amount as had been the Purge Amount and the reason for that, as I understand it, was that, in both instances, the calculation of the sum in question was intended to reflect the Claimant's prospective share of assets dissipated by the Defendant.

49. Once it is understood that the lump sum was not (and was nothing to do with) the Purge Amount then any question of the lump sum constituting a 'fine or other penalty' falls away. The lump sum was simply a lump sum awarded in divorce proceedings and enforceable, pursuant to **Rule 46(1)**, as 'a debt, or definite sum of money'.

50. Even if one could regard the Florida court's decision as to unequal distribution of assets as, in any sense, penal in nature, as with, for example, punitive or exemplary damages, then it is clear that such an award is not precluded from enforceability as a 'fine or other penalty' since it is clear law that such an award is not regarded as penal for purposes of **Rule 46 (1)** and that the limitation upon enforceability in respect of money payments, under **Rule 46(1)**, applies only to monies payable, directly, or indirectly, to the State (see: **Rule 46 (1) at 14-026** and the authorities there cited).

51. In the result and subject to the matter next discussed, I am satisfied that the lump sum payment, together with the other monetary awards, in respect of attorneys' fees and costs and together with a limited amount of the alimony claimed by the Claimant in these proceedings can be enforced in these proceedings to judgment and that there is no realistic answer to be made to those claims.

52. The limitation in respect of alimony arises because the Florida court's order provided that the Claimant's entitlement to alimony was extinguished in the event of her remarriage (page 23 of the Florida judgment). The Defendant asserts that the Claimant remarried on 3 April 2019 and that, consequently, his liability under the Florida judgment is limited to the amount of alimony outstanding to that date; namely $47,164.10. For purposes of the current applications, that limitation is conceded by the Claimant.

53. There remains to consider, in respect of the monetary claims, the question as to whether, by indicating, in her witness statement, dated 8 November 2021, as set out in paragraph 12 of this judgment, that she was not pursuing the monetary elements of the Florida judgment in these proceedings, the Claimant has made a concession from which she cannot resile and which, in consequence, precludes this court, in this litigation, from enforcing the money claims arising from the Florida judgment.

54. I am not persuaded that this is the case.

55. The Claimant, in her witness statement, dated 22 April 2022, as well, of course, as in her recent Particulars of Claim and additional summary judgment application, made it plain that she was not foregoing her monetary entitlements and, it follows that, from April 2022 onward, the Defendant has been aware that that has been the case. There is no question, therefore, of the Defendant being, or having been, taken by surprise.

56. The question, therefore, reduces to this; does the fact, that, between 8 November 2021 and 22 April 2022, the Claimant was denying any intent to enforce her monetary claims, mean that she cannot now enforce those claims, at all, in this litigation.

57. In my view, the answer to that question is 'no'.

58. Mr Goold advances his argument upon two grounds.

59. He suggests, firstly, that the Defendant's election to forego his challenge to this court's jurisdiction, as set out in paragraph 11 of this judgment, was founded upon the Claimant's concession in respect of her monetary claims and that, having made that election on the basis of that concession, the Claimant should not now be permitted to resile. That argument reflects the way that the matter is pleaded in the Defendant's

Defence, namely that the Claimant is estopped by her statement, in her November 2021 witness statement from advancing her money claims.

60. The difficulty with the estoppel argument is, quite simply, that there is no evidence at all to support the suggestion that the Defendant's alleged 'detrimental' conduct, in foregoing a jurisdictional challenge, arose out of the Claimant's concession. That contention is not pleaded, or particularised, in the Defendant's Defence. Nor could, or did, Mr Goold, point to any evidence at all from the Defendant in support of the suggested estoppel.

61. There has been ample opportunity to put in such evidence. The concession point was recognised as a 'live' issue in the August 2022 directions order and, accordingly, if evidence was available to support the supposed estoppel, it is inconceivable that steps would not have been taken to adduce that evidence in these applications. No such steps have been taken and, tellingly, it formed no part of Mr Goold's careful and detailed submissions that such evidence would be available at any trial.

62. In the result, I do not think that any estoppel, or any associated waiver argument, is open to the Defendant,

63. The weakness in the Defendant's position, in respect of estoppel and waiver, is, I think, reflected in the fact that, before me, Mr Goold chose to found himself, primarily, upon a different argument, namely that, by analogy, with the court's approach to the withdrawal, on appeal, to concessions made at trial, or, in the context, of split trials, to the withdrawal at a later stage in a series of split trials, of a concession made at and in respect of an earlier stage in those trials, the Claimant's concession in this case is one that she should not be allowed to withdraw.

64. In support of his argument, Mr Goold drew my attention to the judgment of Mann J, In **BT Pension Scheme Trustees Ltd v British Telecommunications Plc and another [2011] EWHC 2071 (Ch)**.

65. In that case, the parties, in complex pensions litigation had, after detailed discussions, agreed a series of issues for determination. The court had tried out and determined a number of those issues and, following and, I think, in consequence of those determinations, the second defendant, the Secretary of State for Business Innovation and Skills had sought to modify the, as yet, undetermined issues so as to raise as an issue something which, in the negotiation of the original agreed issues, had been conceded. Mann J concluded that the Secretary of State should not, in that context, be permitted to modify the issues for determination and resile from the previous concession.

66. Mann J treated the issue for his determination as analogous with the position which arises when, on an appeal, a concession made for purposes of trial is sought to be withdrawn. He did so, as explained at paragraph 34 of his judgment, because, as he saw it, the determinations that he had been called upon to make and had made, had been, as with a trial, intended to be final determinations and that, consequently, the approach that he should adopt, in determining whether a concession, made for the purposes of the matters already determined, could be withdrawn should be dealt with in the same way that an appeal court would with a concession that has been made, for purposes of a trial.

67. In that context, where a decision has already been made and where there is a risk that the withdrawal of the earlier concession will, or may, operate to the prejudice, or detriment, of the party opposing withdrawal, because that party, absent the concession, might have conducted matters differently at the trial giving rise to the decision in question, permission to withdraw the concession should not be given. The level of risk of prejudice, or detriment, which will, in this context, preclude the court from allowing a concession to be withdrawn is a low one and, as Mann J put it, the benefit of the doubt should go to the party opposing the withdrawal.

68. I do not think that this case is analogous either to what I will call the appeal cases, or to the position with which Mann J was confronted, in **BT Pension Scheme Trustees**, or, therefore, that the principles applicable in those cases are applicable in this case.

69. What is central both to the appeal cases and to the position in **BT Pension Scheme Trustees** is the fact that a party is seeking to withdraw a concession after a decision has been made in respect of the matter which was the subject of the concession. As is clear from paragraph 34 of **BT Pension Scheme Trustees**, it was the distinction between a case where determinations had already been made and one where, as in this case, no decision has been made, which caused Mann J to apply to the situation before him the principles which have been developed in the appeal cases and which are designed to ensure that a concession is only withdrawn where the court is satisfied that the existence of the concession at trial has not caused the case at trial to have been conducted differently than would have been the case had the concession not been made and where, therefore, the subsequent withdrawal of the concession has not disadvantaged the party opposing the withdrawal in the conduct of the case which is now subject to appeal.

70. None of the foregoing applies in this case. In this case there has not, until now, been any determination and there is no question, therefore, of the concession now sought to be withdrawn having affected any determination within these proceedings.

71. That, as it seems to me, leaves the question of the withdrawal, or otherwise, of the concession at large and requires me simply to determine whether, in all the circumstances, I should allow the concession to be withdrawn.

72. The answer to that question is ‘yes’.

73. The refusal to allow the withdrawal of the concession would be draconian and disproportionate. It would preclude the Claimant from recovering, in these proceedings, a sizeable award to which, as I find, she is entitled and it would open up the prospect, if she was required to bring new proceedings, of the court’s time and resources being taken up with strike out proceedings, based upon contentions of **Henderson v Henderson** abuse.

74. There is no good reason for the court to go down that road. The Defendant has not been taken by surprise by the Claimant’s wish to pursue her monetary remedies. Nor, as already set out, in paragraphs 60 and 61 of this judgment, is there any evidence that the Defendant has suffered any prejudice, or detriment, arising from the concession, or its withdrawal.

75. In those circumstances, the Claimant is not precluded from her monetary remedies and, as foreshadowed in paragraph 73 of this judgment, I am satisfied that there is no other

reason why the Claimant should not enforce those claims. The question next discussed, namely whether the Lebanon judgment contradicts the Florida judgment and, if so, which, if either, of those judgment, this court should recognise, or enforce, does not bear upon the monetary claims and, therefore, whatever the answer to that question, does not prevent the Claimant from having her judgment in respect of those claims.

76. In the result I will give judgment in favour of the Claimant in respect of all the monetary elements of the Florida judgment, subject to the limitation upon the alimony claim set out in paragraph 52 of this judgment. The question of the currency in which judgment should be given and the question of interest upon the monies to be recovered will be dealt with when this judgment is handed down.

77. I turn, then, to the recognition, or enforcement, of the Florida judgment, as it relates to the London Property.

78. The starting point, here, as outlined in paragraph 75 of this judgment, is whether the Florida judgment, as it relates to the London Property, should not be recognised, or enforced, in this court, because it conflicts with the Lebanon judgment and because, in the event of such a conflict, the Lebanon judgment should prevail.

79. The short answer to those questions is that, in my view, the Lebanon judgment, read in its context, does not contradict, or conflict with, the Florida judgment and that, even if it did, that conflict would not provide a realistic answer to the Claimant's claim for recognition of the London Property, or for the enforcement of the Florida judgment, as it relates to the London Property.

80. The Lebanon judgment was delivered by the First Chamber of the Court of Appeal of Mount Lebanon, on 24 October 2019. It is, accordingly and relevantly, subsequent, in time, to the Florida judgment. As set out in paragraph 2 of this judgment, the court rejected the Claimant's claim to a share in the Defendant's Lebanese assets. Those assets were not, as appears from page 16 of the Florida judgment, dealt with, at all, in the Florida judgment, but were left for determination by the Lebanon court.

81. In regard to the London Property and as set out later in this judgment, the Claimant, having already had the benefit of the Florida judgment, has asserted no claims to the London Property in the Lebanon proceedings. It is, additionally, common ground and reflected in an excerpt and translation from the Lebanese court record that, at a hearing before, the Lebanese court of appeal, in April 2019, the Defendant's advocate, in the presence of the Defendant, stated that 'he retracted all civil demands of his client as the (Claimant) obtained all funds and properties owned by the (Defendant) in America and London and therefore that his clients claims should be only limited to the divorce'.

82. The accuracy of that record and, therefore, the accuracy of the concession, or limitation, upon the Defendant's claims in the Lebanese divorce proceedings is not disputed by the Defendant. The Defendant's evidence is that his lawyer was mistaken in making the concession. He does not contend, however, that any step was taken, before the Lebanese court, to rectify the error.

83. In light of the contents of the judgment, as set out in the next following paragraphs, I find the Defendant's evidence that the apparent concession was inadvertent and

mistaken wholly implausible. The reason why no steps were taken to correct the so-called mistake was that no mistake was made.

84. The judgment of the court of appeal recorded what were termed the Defendant's requests to the court and, specifically, that he asked the court to declare his divorce from the Claimant, not to decide any issues of custody (the children being adults) and not to decide the division of the ownership of the common assets because their ownership had been transferred to the Claimant.

85. The judgment further recorded that, at a further hearing on 25 June 2019, the Defendant reiterated that he wished to limit the subject matter of the case to the divorce. That limitation was further recorded by the court in a recital to the court's order; namely that the Defendant limited his final requests to the declaration of his divorce and 'retreated' from other requests 'in terms of responsibility of divorce, its material effects and custody of his children'.

86. In regard to the Claimant's 'requests', before the court of appeal, the judgment recorded that she had asked the court, as I read the judgment, to take steps to safeguard, or 'attach', the properties owned by the Defendant in Lebanon and to appoint an expert to appraise the value of the properties, with a view to their equal division. The judgment further records, as I understand it, that this was a late and, I think, procedurally defective plea, that the Claimant had asked the court to reject the Defendant's requests,'in terms of dividing the money of the two parties' but that the Defendant had 'retreated' from those requests and limited himself to the divorce.

87. It is quite clear from the foregoing that, far from the Defendant's advocate being mistaken, when he withdrew the London Property from consideration, that withdrawal was deliberate and reflected a decision to limit the matters left for the court's consideration solely to the question of divorce.

88. Be that as it may and whether, or not, there was a deliberate withdrawal of the London Property from consideration, it is, in any event, abundantly clear that the understanding of the court was that the only question placed before the court by the Defendant was as to his divorce.

89. In the result, the court's order declared the divorce of the parties and rejected 'all the reasons, requests, arguments, including the request of placing an attachment on the real estates of the (Defendant)' and 'the request of the (Claimant) to divide these real estates …for the reasons set forth in this decision'.

90. I have no doubt at all that the judgment does not touch upon the London Property in any way and, consequently, does not conflict, at all, with the Florida judgment, as it relates to the London Property.

91. In the context of the positions taken, or understood to be taken, by the parties, before the court of appeal, it is, in my view, completely clear that the court made no order affecting the London Property.

92. The Defendant, as I find, specifically and unequivocally, limited the ambit of his claim, simply, to his divorce and explicitly rowed back from any other claims. If that was not the case, then it was, clearly the understanding of the court that that was the case.

Correspondingly, the Claimant's 'requests' related solely to the Lebanese properties and did not touch upon the London Property, or anything other than property in Lebanon.

93. The court's ruling reflected and dealt with those positions; acquiescing to the Defendant's limited claim and rejecting that of the Claimant. It was not asked to go beyond those positions and it did not do so. The reference in the court's order to the real estates of the Defendant was not a reference to his real estates, other than in Lebanon, since it was only the Lebanon property which was in issue before the court.

94. Mr Goold drew attention to the fact that the judgment, when recording the Defendant's 'requests' to the court and the limitation upon those 'requests', had, as set out in paragraph 83 of this judgment, asked the court to exclude from its consideration the division of common assets because those had already been transferred and suggested that that limitation had not included the London property, because that property was not a common asset.

95. There is, with respect, nothing in that point.

96. Firstly and as already set out, taken overall, it is perfectly clear that the Defendant's 'request' to the Lebanon court was limited, or understood to be limited, solely, to the question of divorce.

97. Secondly, the reference to assets already transferred can only have been a reference to the properties, including the London Property, transferred pursuant to the Florida judgment, and to the exclusion from the Defendant's claim, before the Lebanese court of those properties, as set out in paragraph 81 of this judgment. No other properties have been transferred, or purportedly transferred, to the Claimant and the fact that the London Property may have been mis-described in the judgment as a common asset does not detract from the fact that that property, however described, was plainly not in issue before the court, or, correspondingly, a subject of the Lebanon court's order.

98. In light of the foregoing and the absence of any conflict, as between the Florida judgment and the Lebanon judgment, the question as to the priority that this court should give, as between those judgments, had they been in conflict does not now arise.

99. I am satisfied, however, that had it arisen for determination and had the Lebanon judgment, purportedly, rejected the Claimant's claim in respect of the London Property, then it would, nonetheless, be the Florida judgment and not the Lebanon judgment that this court should and would recognise.

100. It is not in dispute between the parties that the general rule to be applied in the courts of England and Wales is that, where there are two final and unimpeachable judgments of courts of competent jurisdiction, then the court will recognise and, so far as applicable, give effect to the earlier of the two judgments. The rule is not immutable. Circumstances may arise, principally by virtue of estoppel, whereby the holder of the earlier judgment is estopped from asserting the primacy of that judgment. No such estoppel, however, has been advanced, or, even, adverted to, in this case.

101. Reference was , however, made to the different rule, applied in respect of certain conflicting judgments, in the United States, where, as discussed, by Lord Keith, in the

Privy Council, in **Showlag v Mansour and Others [1994] 1 AC at page 443 below E**, it would appear that, the court of one state, faced with conflicting judgments of other states within the union, will recognise the later judgment rather than the earlier.

102. I do not regard that rule as having any relevance in this case.

103. Firstly, it is a rule, which, as discussed by Lord Keith, may well only be limited to the inter-state context and not applicable, therefore, in the international arena.

104. Secondly and even if applicable, in a United States court, in respect of the recognition, in that court, of a later judgment of a foreign court as having primacy over an earlier judgment of a foreign court, it is entirely extraneous to the matters with which I am concerned.

105. The argument advanced, based upon the last-in-time rule, is that because the Lebanon judgment was later in time than the Florida judgment, the Florida court would not enforce its own prior judgment. If the Florida court would not enforce its own judgment, then this court should not recognise, or enforce, that judgment.

106. That argument is, however, based upon a misunderstanding. The last-in time- rule, where applicable, relates to the recognition of conflicting judgments of courts other than the court where recognition is sought. It is not a rule which provides that a later conflicting judgment of a foreign court should have precedence over the judgment of what I will call the 'home' court, such that the 'home' court cannot, because of a later foreign judgment enforce its own prior judgment. Correspondingly, or consequently, it is not a rule which, because it renders the judgment of the 'home' court unenforceable (which it does not), affords grounds for an argument that the judgment of the 'home' court should not be recognised in this court.

107. Put shortly and as set out above, the last-in-time rule is simply irrelevant in the current case and affords no ground at all, therefore, for disapplying the general rule, applicable in this court, that, as between two conflicting foreign judgments, the first-in-time judgment (here, the Florida judgment) should be given primacy in terms of recognition, or enforcement.

108. The Florida judgment, as it relates to the London Property, gives rise to two questions. Firstly, whether, the Third Party's claim to beneficial ownership of the London property, in circumstances where she was not party to, or bound by, that judgment and where the issue of beneficial ownership remains to be determined, precludes any recognition, at all, of the Florida judgment, as it relates to the London Property. Secondly, whether, quite irrespective of the Third Party's claim to beneficial ownership, this court should not, in any event, recognise, or give effect to a foreign judgment which purports to extinguish the Defendant's title in English real property and to vest such a property in the Claimant.

109. The Claimant's answer to the first of those questions is that this court, can and, in the circumstances of this case, should limit the recognition that it gives to the Florida judgment, in respect of the London property, to a declaration that, pursuant to that judgment, the Claimant is the owner of the Defendant's interest in the London property (for the reasons set out at paragraphs 40 and 41 of this judgment, I put to one side, for this purpose, the further limitation which the Claimant's advisers have, as I find,

erroneously suggested should be imposed upon the declaration sought). By so doing it will, as it is submitted, give effect to the Florida judgment, without precluding the Third Party from advancing her claim and without, in any way, prejudging that claim.

110. The Defendant contends, primarily, that the Florida judgment, as it relates to the London Property should not be recognised at all. It is a judgment whereby the Florida court purports to vest English real property, an English immovable, in the Claimant and, as such, as the Defendant submits, it is not a judgment that this court can, or should, recognise, or enforce. By way of secondary argument, it is submitted that, even if the Florida judgment is capable of recognition, in respect of the London Property, declaratory relief in support of the Florida judgment and in respect of the London Property should not be granted; on the footing that such relief would, given that the Third Party's claim to beneficial ownership remains for determination, be premature and lacking in utility.

111. In regard to this secondary submission, I am not persuaded that, in the event that the Florida judgment, as it relates to the London Property, is a judgment properly to be recognised by this court, then it would be premature, or lacking in utility, to set out, by way of declaration, that which the court had recognised. Specifically, it seems to me that, were it to be the case that this court determined that the Florida judgment, as it relates to the London Property, is a judgment that the court recognises, as vesting the Defendant's beneficial interest in the London Property in the Claimant, or as operating as a transfer of that property to the Claimant, it would not be premature, or without utility to so declare, leaving open only the question of the extent of that beneficial interest, or, indeed, whether the Defendant had any beneficial interest in the property, to be vested in, or transferred to, the Claimant.

112. All that said, I am satisfied that the Florida judgment, as it relates to the London Property, is not a judgment that this court can, or should, recognise.

113. I have set out, at paragraphs 5,6 and 7 of this judgment, the judgment and order of the Florida court, as it relates to the London Property. The explicit intent of the judgment and the order, giving effect to the judgment, was to, there and then, extinguish all the Defendant's interest in the London Property, award the London Property to the Claimant 'in fee simple absolute, outright free and clear of any and all claims of the (Defendant)', transfer to her 100% of the Defendant's interest in the London Property and render her the 100% owner of the property. The judgment and order was, purportedly, to take effect as a transfer, or conveyance, of the London Property to the Claimant

114. Although the judgment required the Defendant to take all necessary steps to transfer to the Claimant the title to the London Property, it is, I think, abundantly clear that the purpose of that provision was not, thereby, to effect a transfer of the legal, or beneficial, interest in the London Property, since that had been, purportedly, effected by the judgment and order, itself, but, rather, to ensure that the paper title reflected the ownership of the property, as directed by the Florida court.

115. It is unsurprising, given the language of the order, in particular, the award of the property to the Claimant in fee simple absolute and the purported conveyance of the property to the Claimant, by way of the judgment and order, that it has been strongly argued by the Defendant that the order of the Florida court was an order in rem, that is

to say an order intended to be good against all the world. The significance of that conclusion, if reached, is that, in respect of an order in rem and as set out, in **Dicey, Morris and Collins, 16th Edition, at Rule 50**, the jurisdiction of this court to recognise and enforce an order in rem made by the court of a foreign country is limited, in respect of immovables, such as land, to immovables situated in that country and, conversely, is not available if an order in rem of the foreign court is made in respect of immovable property outside the territory of the judgment court (see: **Dicey, Morris and Collins 16th Edition, Rule 139 and Rule 50, footnote 429**).

116. Having carefully considered the Florida judgment, I am not wholly persuaded that the judgment and associated order should be considered an order in rem.

117. In **Pattni v Ali and Another [2006] UKPC 51**, Lord Mance, sitting in the Privy Council, explored, in some detail, the distinction between an in rem and an in personam judgment. Relevantly, at paragraph 23, he noted that the fact that a judgment determines rights of property does not, in itself, render the judgment a judgment in rem. It only has that effect, where the judgment, or order in question is intended to be valid against all the world.

118. It seems very unlikely to me that a determination made in divorce proceedings, as between husband and wife, albeit in respect of the division and consequent ownership of their property was, or would have been, intended to go further than determine the rights of the Claimant and the Defendant, inter se, or to operate, for example, so as to preclude the Third Party from bringing the claim, as to beneficial ownership, that she now brings.

119. It seems much more likely that the intent of the Florida court was to settle the ownership of the London Property, as between the Claimant and the Defendant, albeit subject to any relevant third party rights, such that, as between the Claimant and the Defendant, but not as against the world at large, the Claimant was the 100% owner of the property and such that the purported conveyance to the Claimant was, likewise, subject to any material third party rights.

120. That, however, is not the end of the matter. As explained and discussed in paragraph 24 of **Pattni**, the rules applying to judgments in rem form a part of wider principle, under which the actual transfer of property, movable, or immovable, is treated, in principle, as being a matter for the courts and legislatures of the country in which the property is situate. Such a transfer will be recognised in this court, irrespective of whether the transfer was intended to take effect, as against all the world, or merely to bind the person who, in this court, seeks to challenge the transfer in question. The corollary, or converse, of that proposition is, as it is put, by Lord Mance, in **Pattni**, that 'in the unlikely event that that the courts of state A were to purport to actually transfer or dispose of property in state B, the purported transfer should not be recognised as effective in courts outside state A'.

121. Unlikely, or not, that is precisely what the Florida court purported to do, in this case, and I have no doubt at all that, in consequence, the purported transfer, vesting, conveyance, or award of the London Property to the Claimant, by way of the Florida judgment (however the disposal of the property, in favour of the Claimant, is formulated in the judgment), is incapable of recognition, or enforcement in this court. Correspondingly, I have no doubt at all that the purported disposal to the Claimant

cannot be recognised as effective to transfer, or vest any beneficial interest in the London Property in the Claimant.

122. The same conclusion arises if the matter is analysed purely in terms of private international law, as it relates to immovables. As set out in **Dicey, Morris and Collins 16th Edition at Rule 139** 'A court of a foreign country has no jurisdiction to adjudicate upon the title to, or right to possession of any immovable situate outside that country'. That rule, although, as set out in paragraph 115 of this judgment, applying to judgments, or orders, in rem, made in respect of immovables, is not confined to orders in rem and applies to all judgments, or orders, in respect of immovables made by a foreign court in respect of immovables, such as land, outside that country.

123. In this case, the Florida court, in purporting to vest, transfer, award, or convey, the London Property to the Claimant, has plainly adjudicated upon the title to that property in a manner which cannot be recognised by this court as effective and as capable of passing any interest in the property to the Claimant.

124. I have considered, in respect of the foregoing, whether the Florida court's order, whereby the Defendant was required to 'take any and all steps reasonably necessary in order to transfer title' of the London Property to the Claimant, can stand as a separate and enforceable part of the Florida judgment, recognisable by this court and outside the ambit of the Rules discussed above, and, if so, what would be the effect of treating the order in that way.

125. It seems to me that this aspect of the court's order should not be viewed in isolation, or as capable of severance from the rest of the Florida judgment and separately recognised. The order to transfer title is not, in my view, free-standing, but, rather, forms an integral part of the judgment purporting to vest the London Property in the Claimant. The Defendant is ordered to take all steps necessary in order to transfer the title 'as set forth' in the order; that is to implement the purported disposal of the property in favour of the Claimant, already effected by the judgment. It is, as Mr Goold put it, the part of the overall judgment relating to the London Property which provides the 'mechanics' required to ensure that the paper title reflected the transfer of ownership effected by the judgment . As such it is a part of and not separate from the judgment, as it relates to the London Property and, accordingly and for the reasons already set out, it cannot be recognised, or enforced in this court and cannot, therefore, be recognised as a valid order for transfer, or, consequently, as being effective to transfer the beneficial interest, by the application, for example, of the equitable maxim that equity treats as done that which ought to be done..

126. I add that, in my view, the same position would arise even if this aspect of the Florida judgment was to be treated as separate and free-standing. So regarded, it remains an order, whereby, in directing a transfer of the title, the Florida court adjudicated upon the title of an English immovable. As such the order is incapable of recognition, or enforcement in this court and, in consequence, incapable of operating as a valid order, or as having any potential to transfer a beneficial interest.

127. In the result, I am satisfied that the Florida judgment should be recognised and enforced in respect of the Claimant's money claims, but that it should not be recognised, or, consequently, enforced, as it relates to the London Property. The Defendant has no realistic answer to the Claimant's claim to have the Florida judgment recognised and

enforced in respect of her monetary claims. The Defendant, however, has a complete answer to the Claimant's claim to recognition of the Florida judgment, as it relates to the London Property, and consequently to the Claimant's claim for declaratory relief.

128. In regard to the latter, there are, in my judgment, no issues capable of being taken to trial and, accordingly and subject to any submissions from the parties, it is my intention, when handing down this judgment, to give judgment in favour of the Claimant, in respect of her money claims, but to dismiss the balance of her claim.

129. There remains for consideration the disposal of the Third Party's claim. It seems to me that the effect of my decision, in respect of the London Property, is to render the Third Party claim, as between the Third Party and the Claimant otiose. If, as I find, the Claimant has no recognisable, or enforceable, interest in the London property, then the issue, as between Claimant and Third Party, as to the beneficial ownership of the property, is one that no longer arises for determination. As between the Third Party and the Defendant, there is no dispute and, therefore, no lis for determination. My inclination, subject to further argument, would, therefore, be to dismiss the Third Party's claim, subject, of course, to issues of costs and, thereby, bring this litigation to a conclusion.