Neutral Citation Number: [2023] EWHC 2106 (KB)

Case No: FJ 207/22

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/08/2023

Before :

MASTER COOK

- -

Between :

Rita Alay Libera Del Curto	**Applicant**
- and -	
(1) Julian Enrique Del Curto	**Respondents**
(2) Gloria Del Curto	

- -
- -

Seth Cumming (instructed by **Joseph Hage Aaronson LLP**) for the **Applicant**
Richard Dew (instructed by **Forsters LLP**) for the **1st Respondent**

Hearing date: 24 July 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 18 August 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MASTER COOK

MASTER COOK:

1. This is an application by the First Respondent to set aside a registration order made by Master Eastman on 20 December 2022, which registered a judgment of 3 February 2022 given by the Tribunale di Sondrio under the Foreign Judgements (Reciprocal Enforcement) Act 1933.

2. Pursuant to an order made by me on 12 July 2023 this hearing is limited to a determination of whether the order of Master Eastman is to be set aside on the following mandatory grounds set out in s.4(1) of the 1933 Act:

    i) That there is not "*payable under [the judgment] a sum of money"*, such that it would be deemed to have jurisdiction under s.1(2)(b) of the 1933 Act.

    ii) That the Tribunale di Sondrio had no jurisdiction s.4(1)(a)(ii) because;

        a) the judgment was not given in an action *in personam* such that it would be deemed to have had jurisdiction under ss.4(2)(a);

        b) in any event, the court is deemed to not have jurisdiction under s.4(3)(a) (overruling s.4(2)(a) because the subject matter of the proceedings was immoveable property outside the country of the original court (reflecting the common law position).

A Brief Background to events

3. The facts giving rise to the Judgment and Registration Order have been set out in the witness statements. I note that some of the Applicant's narrative account is contested however it is common ground that the issues I have to decide are ones of law and it has not been necessary for me to resolve any of the disputed factual issues at this stage.

4. The matter arises out of the death of Davide Del Curto (the "Deceased"), an Italian citizen, who was born in 1927 in Italy and who died in Chile in a helicopter accident in 1983, aged 55.

5. The Deceased had three children, who are the parties in this matter. The Respondents Julian and Gloria are, respectively, the Deceased's son and daughter by Ms Edith Prieto Del Curto ("Edith"), from whom he had separated in 1967. Julian was born in 1952 and lives in England. Gloria was born in 1964 and lives in Chile. The Applicant Rita is the Deceased's daughter by Ms Alay Leventhal ("Alay"), with whom the Deceased was in a relationship from 1971 until his death in 1983. Rita was born in 1980 in the United States and lives in England. Hereafter I shall refer to the parties by their first names.

6. The Deceased was a very wealthy businessman and had significant assets in several different jurisdictions. The extent of his estate is unclear, however it is common ground that, as at his death, it included: three apartments and a house in Sondrio, Italy; properties and shares in companies in Chile; and bank accounts in Switzerland and other jurisdictions. The Deceased was treated as having died intestate insofar as his Chilean assets are concerned. He left a will, but it did not deal with his Chilean assets, and none of the parties to the current action were beneficiaries of it.

7. It is Julian's case the administration of the Deceased's Chilean estate was handled in Chile by his company lawyers. The estate was divided between Julian (then living in the United Kingdom), Gloria and their mother in accordance with Chilean law. As Rita was an illegitimate child, she was not entitled to any inheritance under Chilean law (as then in force), even had the company lawyers been aware of her.

8. In 2003 Rita instituted proceedings before the courts of Santiago, Chile, in an attempt to reopen the Deceased's Chilean succession. This was dismissed at first instance. Her appeal was then dismissed by the Appeal Court of Santiago in 2005.

9. At the time of his death the deceased was an Italian citizen and it is Rita's case that under Italian law she was entitled to 2/9ths of the Deceased's worldwide estate. On 30 July 2008 Rita therefore issued a petition against Julian and Gloria in the Tribunale di Sondrio, Italy, seeking, pursuant to Article 533 of the Italian Civil Code, a declaration against Julian and Gloria that she was a daughter and therefore a universal co-heir of the Deceased, and to order Julian and Gloria to make restitution to her, pursuant to Art. 533 of the Italian Civil Code, of the assets owed to her *pro rata*, or their cash equivalent, plus interest and revaluation to the present date.

The course of the Italian proceedings

10. Julian and Gloria opposed Rita's petition, with opposition being led by Julian. Their principal arguments were:

    i) (on jurisdiction) The Italian Courts lacked jurisdiction, because: (a) the petition concerned real assets located in Chile, and the Deceased's principal economic assets were in Chile; (b) succession had been opened by them in Chile and not Italy; (c) there was no proof the Deceased was, at the time of his death, an Italian citizen; and/or (d) they alleged that the matter had already been finally determined by the Courts of Chile;

    ii) (on procedure) all documents filed by Rita were invalid due to an alleged lack of power of attorney of Rita's Italian legal Counsel;

    iii) (on limitation) Rita's petition was time-barred under Italian law; and

    iv) (on the merits) Rita was not a daughter of the Deceased, and therefore not an heir under Italian law.

11. On 19 February 2013 Tribunale di Sondrio gave judgment on jurisdiction (the "2013 Jurisdiction Judgment") determining and declaring that the Italian Court had jurisdiction. It held that:

    i) Rita's petition was, "*specifically inheritance action and not a simple real action*".

    ii) Italian law was applicable because the Deceased was found to be an Italian citizen. Similarly, the Italian Courts were declared to have jurisdiction since the Deceased was an Italian citizen.

    iii) The judgment of the Court of Santiago, Chile, did not deprive the Italian Courts of jurisdiction.

12. Julian and Gloria appealed the 2013 Jurisdiction Judgment to the Milan Court of Appeal, which dismissed their appeal on 11 May 2015.

13. Julian and Gloria then appealed to the Supreme Court of Cassation, the highest court of appeal in Italy, which dismissed their appeal on 10 February 2017.

14. The case progressed to an investigation on the merits before the Tribunale di Sondrio. In a partial judgment on the merits, dated 18 April 2019 (the "2019 Merits Judgment") the Tribunale di Sondrio held that:

    i) Julian and Gloria's objection that the petition was time-barred due to the expiry of a 10-year statutory limitation period was rejected.

    ii) Rita was the natural daughter and, therefore, co-heir of the Deceased.

    iii) Julian and Gloria had not been in possession in good faith and Rita was entitled to a share equivalent to 1/3 of the share of 2/3rds (i.e. 2/9ths) of the entire estate of the Deceased.

    iv) Julian and Gloria had engaged in "*highly vexatious procedural conduct*" and made "*spurious objections*", including, for example, seeking DNA tests which they then refused to participate in.

    v) Julian and Gloria were ordered to pay a provisional sum of €17,002,414.70.

15. Julian appealed the 2019 Judgment to the Corte Appello Milano. That appeal was dismissed by the Corte Appello Milano in 2022 (the "2022 Appeal Judgment"), apart from the order for the payment of a provisional sum, which was overturned.

16. The court-appointed expert's appraisal of the Deceased's estate was delivered on 1 March 2021 (the "**Valuation Report**"). The Valuation Report quantified the Deceased's estate, after revaluation to 31 December 2020, at USD 50,717,564. Inclusive of simple interest to 31 December 2020, the Valuation Report quantified the Deceased's estate, after revaluation to 31 December 2020, at EUR 59,099,084.

17. On 4 February 2022 the Tribunale di Sondrio issued the Judgment. The 2022 Judgment is the final and definitive judgment on the merits in the matter. It is common ground that it is enforceable in Italy.

18. The Judgment held and ordered:

    i) The Valuation Report, and in particular the estimated value of the Deceased's heritable assets at USD 50,717,564 as at 31 December 2020, was "*fully endorsed and adopted*". Julian and Gloria had "*not demonstrated that they possessed the hereditary assets in good faith*". They were "*well aware they had a sister and knowingly and stubbornly denied her existence in order not to share the assets received on the death of their father; having enjoyed the hereditary assets,* [Julian and Gloria] *must account for them and pay the proceeds* [to Rita]".

    ii) Julian and Gloria were ordered to pay a sum equivalent to 2/9ths of the inheritance as per the Valuation Report, i.e. EUR 13,133,129.77, inclusive of simple interest to 31 December 2020, plus a further sum of EUR 50,000 in

> relation to their "*highly vexatious*" and bad faith actions in the proceedings, plus costs totalling EUR 140,684.12, and further interest and costs.

19. Julian failed to pay the sums due under the Judgment or any part thereof. Rita accordingly applied for registration in England under the 1933 Act, where Julian lives. The Registration Order was made on 22 December 2022. It was served on Julian on 31 January 2023 and on Gloria on 7 February 2023.

20. Julian applied on 14 February 2023 to set the Registration Order aside, relying on four grounds, the first two of which are the mandatory grounds which are being considered at this hearing. Gloria has not so applied and is now out of time to do so.

21. Lastly, it should be recorded that Julian has filed an appeal against the judgment of 4th February 2022. This appeal is currently pending before the Milan Court of Appeal.

Registration of the Judgment

22. The application for registration of the judgment was made by notice dated 3 December 2022 and supported by the witness statement of Michelle Duncan dated 12 December 2022. That witness statement addressed the issues required by CPR r 77.4.

23. In relation to applications under the 1933 Act CPR r 77.4 provides;

> "(1) An application for registration of a judgment under the 1920, 1933 or 1982 Act must be supported by written evidence exhibiting –
>
> (a) the judgment or a verified or certified or otherwise authenticated copy of it; and
>
> (b) where the judgment is not in English, a translation of it into English –
>
> (i) certified by a notary public or other qualified person; or
>
> (ii) accompanied by written evidence confirming that the translation is accurate.
>
> (2) The written evidence in support of the application must state-
>
> (a) the name of the judgment creditor and his address for service within the jurisdiction;
>
> (b) the name of the judgment debtor and his address or place of business, if known;
>
> (c) the grounds on which the judgment creditor is entitled to enforce the judgment;
>
> (d) in the case of a money judgment, the amount in respect of which it remains unsatisfied; and

(e) where interest is recoverable on the judgment under the law of the State of origin –

(i) the amount of interest which has accrued up to the date of the application, or

(ii) the rate of interest, the date from which it is recoverable, and the date on which it ceases to accrue.

"(4) Written evidence in support of an application under the 1933 Act must also –

(a) state that the judgment is a money judgment;

(b) confirm that it can be enforced by execution in the State of origin;

(c) confirm that the registration could not be set aside under section 4 of that Act;

(d) confirm that the judgment is not a judgment to which section 5 of the Protection of Trading Interests Act 1980 applies;

(e) where the judgment contains different provisions, some but not all of which can be registered for enforcement, set out those provisions in respect of which it is sought to register the judgment; and

(f) be accompanied by any further evidence as to –

(i) the enforceability of the judgment in the State of origin, and

(ii) the law of that State under which any interest has become due under the judgment,

which may be required under the relevant Order in Council extending Part I of the 1933 Act to that State."

The evidence

24. In addition to evidence before Master Eastman the court received the following witness statements:

i) The first witness statement of Maryam Oghanna dated 14 February 2023

ii) The first witness statement of Gianfranco di Garbo dated 14 February 2023

iii) The second witness statement of Michelle Duncan dated 7 June 2023

iv) The second witness statement of Gianfranco di Garbo dated 10 July 2023

The relevant sections of the 1933 Act

25. The relevant sections of the 1933 Act are as follows;

> "4 (2) For the purposes of this section the courts of the country of the original court shall, subject to the provisions of subsection (3) of this section, be deemed to have had jurisdiction—
>
> (a) in the case of a judgment given in an action in personam—
>
> (i) if the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings; or
>
> (ii) if the judgment debtor was plaintiff in, or counter-claimed in, the proceedings in the original court; or
>
> (iii) if the judgment debtor, being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the country of that court; or
>
> (iv) if the judgment debtor, being a defendant in the original court, was at the time when the proceedings were instituted resident in, or being a body corporate had its principal place of business in, the country of that court; or
>
> (v) if the judgment debtor, being a defendant in the original court, had an office or place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place;
>
> (b) in the case of a judgment given in an action of which the subject matter was immovable property or in an action in rem of which the subject matter was movable property, if the property in question was at the time of the proceedings in the original court situate in the country of that court;
>
> (c) in the case of a judgment given in an action other than any such action as is mentioned in paragraph (*a*) or paragraph (*b*) of this subsection, if the jurisdiction of the original court is recognised by the law of the registering court.
>
> (3) Notwithstanding anything in subsection (2) of this section, the courts of the country of the original court shall not be deemed to have had jurisdiction—
>
> (a) if the subject matter of the proceedings was immovable property outside the country of the original court; or
>
> (b). . . . . .

> (c) if the judgment debtor, being a defendant in the original proceedings, was a person who under the rules of public international law was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not submit to the jurisdiction of that court."
>
> "11 (2) For the purposes of this Act, the expression "action in personam" shall not be deemed to include any matrimonial cause or any proceedings in connection with any of the following matters, that is to say, matrimonial matters, administration of the estates of deceased persons, bankruptcy, winding up of companies, lunacy, or guardianship of infants."

Submissions on behalf of Julian

26. On behalf of Julian, Mr Dew began his submissions with some general observations on the applicable legal framework. His starting point was that the Judgment concerns the succession to Chilean assets of a person who died in Chile and who, on Julian's case, was domiciled in Chile. The registration of the Judgment would cause the English Court to recognise and enforce an Italian determination of that succession, in effect overriding an earlier decision reached by the Chilean courts. The question is whether the 1933 Act can and does have that effect.

27. Mr Dew then referred to the common law principles applicable to the recognition of foreign judgment by the English Courts. As far as matters of succession were concerned decisions of foreign courts would only be recognised insofar as they concern assets within that jurisdiction or moveable assets of a person domiciled within that country (being analogous to proceedings *in rem*): see Dicey, rules 162 and 163 and cases such as ***Boyse v Colclough*** (1854) 1 K & J 124 and ***Re Trufort*** (1887) 36 Ch.D. 600.

28. Accordingly, Mr Dew submitted, on the basis of common law principles, the Chilean (not Italian) courts would be recognised as having jurisdiction to deal with the succession of the Deceased's immovable Chilean estate. Further, the Italian courts would only be recognised as having jurisdiction to deal with the Deceased's moveable Chilean estate if the Deceased was deemed to be domiciled in Italy at the time of his death.

29. Mr Dew submitted that the 1933 Act was intended to reflect the common law principles on judgments with only minor alterations. In particular, there was no suggestion at all that the Act was envisaged to alter the common law position on succession. In this respect he relied upon the Report of the Foreign Judgment (Reciprocal Enforcement) Committee (Cmd. 4213, 1932) (the '**Greer Report**') and the observations of Widgery J in ***Société Coopérative Sidmetal v Titan International Ltd*** [1966] 1 QB 828 at 847 D.

30. Mr Dew suggested this is reflected in the framework of the 1933 Act itself. In essence, it provides for the recognition of (i) judgments given in actions *in personam* provided they fulfil certain requirements [s.4(2)(a)], (ii) judgments concerning immoveable property or an *in rem* action concerning movable property provided they are located in

that country [s.4(2)(b)], and (iii) judgments otherwise recognised under common law principles [s.4(2)(c)]. Immovable property outside the country is expressly excluded [s.4(3)(a)]. This he described as a conventional application of the principles by which the judgments of foreign courts have long been recognised.

31. Mr Dew submitted that judgments made in *"any proceedings in connection with …[the] administration of estates*", a wide phrase intended to extend to all matters relating to succession, are expressly excluded from being considered actions *in personam* see, 1933 Act s.11(2). This he said was in accordance with the common law principles outlined above, which recognise the jurisdiction of foreign courts to give succession judgments only where the action concerned succession to assets situated in that country or, as regards succession to movables, if the deceased had his last domicile in that country. If the 1933 Act had intended succession matters to fall within the definition of an *in personam* action, it would have made a major change to the law, one so far not noticed in the 90 years since its implementation.

32. Mr Dew then moved on to the recognition of Italian judgements which are recognised under the 1933 Act under the Reciprocal Enforcement of Foreign Judgments (Italy) Order 1973 (the '1973 Order'). The 1973 Order gave effect to the Convention of 7 February 1964 between the United Kingdom and the Republic of Italy for the reciprocal recognition and enforcement of judgments in civil and commercial matters (the '1964 Convention').

33. Mr Dew pointed out that the 1964 Convention explicitly excluded matters of succession as being outside those matters where the court was deemed to have jurisdiction in personam, see Article IV(3). Thus, neither the United Kingdom nor Italy envisaged succession actions as being within the definition of actions *in personam*.

34. Mr Dew then moved to his first substantive point which was that the judgment was not for a sum of money within the meaning of s.1(2)(b) of the 1933 Act. This submission comprised of two separate threads. First, the Judgment is for the return of specific assets in the first instance, not for the payment of a sum of money and second, the Judgment is not a judgment for a definite sum.

35. As to the first thread Mr Dew submitted the Judgment falls outside the scope of the 1933 Act because the primary obligation under it is to restore the estate's assets *in specie*, not to pay a sum of money. He made reference to Article 533 of the Italian Civil Code which provides for an action by a putative heir for the recognition of his quality as heir and for the restitution of the estate's assets. The bringing of the action implies acceptance of the relevant share of the estate by the successful heir. In the circumstances it follows that the principal obligation arising from the provision is the restitution (i.e., return) of a share of the assets in the estate, not the payment of money.

36. Mr Dew submitted that this was consistent with the terms of the judgment which required Julian and Gloria;

> "*to return to [Rita], pursuant to Article 533 of the Civil Code, the assets and liquid assets, together with the proceeds thereof, which in the course of the legal proceedings formed part of the estate and to which she was entitled pro rata or the equivalent in money of such assets*"

37. Mr Dew suggested that the obligation under the judgment is to make restitution of specific assets forming part of the Deceased's estate. This correlates to the right to a proportionate part of the estate, as confirmed by the heir's implicit acceptance of her share of the estate. The payment of an equivalent sum of money is a secondary obligation under the Judgment, which arises only if the assets cannot be returned in specie. It follows that there is not a sum of money payable under the Judgment and as such Part I of the 1933 Act does not extend to the judgment with the result that the court must set the registration aside.

38. As to the second thread and in any event, Mr Dew submitted the Judgment is not a judgment for a definite sum of money on the basis that since s.1(2)(b) was intended to reflect the common law rule on money judgments, it must be subject to the same requirement that the sum of money **s**hould be either ascertained or ascertainable from the judgment itself, see ***Sadler v Robins*** (1808) 1 Camp 253 and ***Beatty v Beatty*** [1924] 1 KB 807.

39. Mr Dew noted the Judgment requires the Judgment Debtors to transfer to Rita the assets or the equivalent in money "*for a value of not less than USD 4,288,222.00, equal to € 2,760,894.66 plus interest and revaluation*" from the date of death "*in the amount indicated by the court expert's report*". He accepted the Judgment mentions the expert valuation report in its reasoning, but pointed out it does not purport to incorporate its conclusion on revaluation in the dispositive part. The judgment merely references "*the amount indicated*" in the report does not adopt this amount as a finding since, by definition, an indication may not be final. In the circumstances he suggests it is impossible to identify from the Judgment (whether directly or by arithmetical calculation) the value of the assets to be transferred by the Judgment Debtors and therefore the Registration Order must be set aside since it registers the Judgment for a sum equivalent to €13,133,129.77, which is nowhere to be found in the Judgment.

40. Mr Dew then moved to his second substantive point which is that the judgment is one in *rem* and not in *personam*. His starting point for this submission was that the Italian proceedings concerned the devolution of the estate of the Deceased. As such, they concerned the ownership of assets belonging to the Deceased. He observed, it is of the nature of Article 533 of the Italian Civil Code that the heir is to be entitled not to sums of money or to orders against a particular person but to the devolution of assets that were once the assets of the Deceased.

41. Mr Dew submitted that the broad question of whether the Italian Courts are to be regarded as having jurisdiction to determine the case and the narrow question as to whether such proceedings are regarded as being *in rem* or *in personam* are both questions for the English Court to determine in accordance with principles of English law, see ***Pescatore v Valentino*** [2021] EWHC 1953 (Ch) [at 92]. The Italian Court's determination of the narrower issue was clearly part of its determination of its own jurisdiction. That has no effect upon the English Court's decision as to jurisdiction, and there is no basis to allege that an issue estoppel arises.

42. In the circumstances under English principles, a judgment determining the ownership of assets belonging to the estate, with a subsidiary order for their return, is of the nature of an action *in rem*. Indeed, usually the only basis for recognising foreign judgments concerning the succession of someone not domiciled in that country is that the action is analogous to a decision *in rem*, see Dicey 28-008.

43. Mr Dew submitted that in any event, the 1933 Act expressly excludes from the definition of actions *in personam "any proceedings in connection with … [the] administration of the estates of deceased persons*".

44. Mr Dew observed that it is the Judgment Creditor's position that this definition extends only to issues which strictly concern how an estate is administered as opposed to how it devolves (i.e., issues of succession). He suggested this position was wrong for the following three reasons:

    (a) The common law principles do not permit recognition of succession actions on the basis that they are actions *in personam* but only where they concern assets within the jurisdiction or of moveable assets of a person domiciled in that country.

    (b) The 1933 Act was not intended to make any changes to the common law principles (see the Greer Report), and it has been expressly found that it did not do so (***Coopérative Sidmetal v Titan International Ltd***).

    (c) When the statute was extended to apply to Italy, it was done so pursuant to the 1964 Convention between the United Kingdom and Italy. That convention expressly excluded from the definition of *in personam* actions matters of succession: see Article IV(3).

45. Lastly, Mr Dew expanded on his general submission that the judgment concerned immovable property. His point was the Judgment concerns Chilean assets and at no point during the Italian proceedings was any of that property, or its proceeds, in Italy. The table produced by Ms Duncan (reproducing the table relied upon by the 'expert' in Italy) is striking in listing substantial immoveable assets in Chile, some moveable assets (also in Chile) and no assets elsewhere, including in Italy. Thus, the subject matter of the proceedings in Italy were immovable assets located outside the jurisdiction of the Italian courts.

46. For all of the above reasons Mr Dew submitted the Registration Order should be aside.

Submissions on behalf of Rita

47. On behalf of Rita Mr Cumming took exception to the general approach of Mr Dew which he said involved several missteps. He accepted that the 1933 Act "broadly" followed existing common law principles but argued that the starting point must be application of the 1933 Act. In this regard he referred me to the observations of Lord Justice Males in ***Strategic Technologies PTE Ltd v Procurement Bureau of the Republic of China Ministry of National Defence*** [2020] EWCA Civ 1604 at [47];

> "In my judgment it is neither necessary nor productive to decide what answer the common law would give to the question whether a judgment on a judgment can be enforced by action if that question were now to arise. That is because, although they restate much of the common law position, neither the 1920 nor the 1933 Act purports to codify the common law. It was so held by Widgery J in ***Societe Cooperative Sidmetal v Titan International Ltd*** [1966] 1 QB 828 so far as the 1933 Act is concerned and the position is the same for the 1920 Act. The

> right approach, in my judgment, is to consider the 1920 Act on its own terms and in the light of the purpose of the legislation as seen in the Report of the Committee chaired by Lord Sumner dated May 1919 ("the Sumner Committee Report") which led to its passing."

48. Mr Cumming did not accept that "succession" judgments were somehow carved out of the 1933 Act, he pointed out that they were not even mentioned in the Act. He submitted that Mr Dew's reliance on the Convention of 7 February 1964 between the United Kingdom and the Republic of Italy was misplaced as Treaties do not have effect under English law, see ***In re International Tin Council*** [1987] Ch 419 at 443 C.

49. Turning then to the first issue, whether under the judgment there is payable a sum of money. Mr Cumming pointed to the terms of the judgment and made the point that it does not provide for the "*return of certain assets*". The Italian Judgment uses the words "*restituzione*" (restitution) or payment of the monetary equivalent. The Judgment does not refer to any "*certain assets*" being returned.

50. Mr Cumming stated that it is common ground that the Deceased's assets have been sold or dissipated by Julian and Gloria, see the first witness statement of Maryam Oghanna at [14] and that there is no possibility of assets being transferred or "returned", and further Julian and Gloria have not suggested that they can or intend to return assets. The only way in which the Judgment could be satisfied is by payment of a sum of money.

51. Further Mr Cumming pointed out that Rita has not sought registration in respect of any order to return assets. The Registration Order registers the Judgment as an order to pay money. He submits it is not a requirement of the 1933 Act that a judgment provide exclusively for payment of a sum of money. All that is required is that "*there is payable a sum of money*." This is also clear from CPR 71.4(4), which expressly provides that certain provisions of a judgment may be registrable even if other provisions are not. There is no reason why a judgment which requires the defendant either to return something or to pay a sum of money, is not a registrable judgment insofar as the order to pay a sum of money is concerned.

52. Mr Cumming then turned to the criticism levelled at way in which the judgment referred to the sum payable. He relied upon two passages from the judgments in ***Beatty v Beatty*** [1924] 1 KB 807;

> "But it was said that a judgment, even though it cannot be varied, is not final in the sense that it can be enforced by action, unless it appears on the face of the judgment itself what is the amount to be sued for, and that, as the order in this case was to pay at the rate of twenty dollars a week, you have first to ascertain the number of weeks that the instalments have been in arrear and do an arithmetic sum to arrive at the amount due. I cannot accept that contention. No doubt a judgment to be final must be for a sum certain. But a sum is sufficiently certain for that purpose if it can be ascertained by a simple arithmetical process." (per Scrutton LJ at 815).

> "It was said indeed that it does not appear on the face of the order itself that any definite sum was due. But I think that the maxim "Id certum est quod certum reddi potest" applies; and if by the application of a little simple arithmetic it can be ascertained that at the date of action brought a definite sum was due and in arrear, it seems to me that this is as final and conclusive an order for the payment of that particular sum as if there had been a definite order for the payment of a named sum on a future date." (per Sargant LJ at 818).

53. Mr Cumming submitted that a simple arithmetical calculation was all that was needed to calculate the sum payable under the judgment of the Italian Court. According to the Judgment, the sum payable is to be calculated as 2/9^{ths} of the revalued estate plus interest. The Judgment provides:

> "The court expert's report was still prepared **to quantify** and describe the size of the deceased's assets and **the value of the inheritance due to the plaintiff**.…
>
> …**having determined the value of the estate**, which the court-appointed expert has quantified at USD 50,717,563…
>
> The plaintiff is **thus entitled to 2/9 of the inheritance, plus interest.**
>
> The Court… orders the defendants to return… the equivalent in money of such assets to the extent to which she was entitled pro rata… plus interest and revaluation from 12.03.1983 to date in the amount indicated in the court expert's report…"

54. By reference to the valuation report, "*the estate of the deceased Davide Del Curto, updated for inflation and simple legal interest as of 31.12.2020*" is quantified at EUR 59,099,084. Following the Judgment 2/9^{ths} of EUR 59,099,084 is equal to EUR 13,133,129.77.

55. In the circumstances Mr Cumming submitted the reference to revaluation, and to interest, confirms that the Judgment is for payment of a sum of money and not for the return of specific assets. Revaluation entails a monetary calculation and would only be necessary if payment of a sum of money was required, as opposed to the assets themselves. Similarly, interest, by definition, presumes and can only be calculated on the basis of a principal sum of money. Neither the revaluation or interest could have been ordered if the Judgment were not for a sum money. Indeed, the Valuation Report itself would be of little purpose if this were a judgment ordering the return of specific assets, and not for money.

56. Mr Cumming submitted that there no rule of law which prohibits reference to other documents to calculate the sum payable, particularly when those documents are specifically referred to in and adopted by the Judgment itself. Indeed, reference to extrinsic materials is provided for by CPR r. 71.4(4)(f), in relation to interest.

57. Lastly Mr Cumming submitted that the Italian Judgment required the payment of other sums of money not mentioned in the set aside application;

> "The Court orders the defendants to jointly and severally pay the plaintiff's legal costs, which have been set at EUR 103,236.00 for the phase of litigation on the merits…;
>
> EUR 35,844.00 for each of the two stages of the seizure and complaint respectively, plus lump-sum compensation for costs and statutory costs;
>
> EUR,1604.12 for transfers
>
> The Court orders the defendants to pay a sum equitably determined pursuant to Article 96 para.3 of the Code of Civil Procedure in the amount of EUR 50,000.000"

This he said was entirely consistent with the Court of Appeal of Milan's 2022 judgment that it was in the nature of the proceedings that there would be a finding on the "*payment of the quantum*". The Judgment registered was that judgment. In the circumstances the First ground of challenge should be rejected.

58. Mr Cumming then turned to the question of whether the Italian Courts were deemed to have jurisdiction because the action was given in *an action in personam.*

59. Mr Cumming started from the point that it was common ground that Julian voluntarily appeared in the proceedings and thereby submitted to the jurisdiction of the Italian Court. The issue for the Court therefore is whether the Judgment is a judgment *in personam*. If the Judgment is a judgment *in personam*, then the Italian Courts are deemed to have had jurisdiction pursuant to section 4(2)(a) of the 1933 Act.

60. Mr Cumming relied upon legal commentary in **Dicey, Morris & Collins and the Conflict of Laws, 16th ed**., 11-002 where it is stated that a claim *in personam*,

> "…may be defined positively as a claim brought against a person to compel that person to do a particular thing, e.g. the payment of a debt or of damages for a breach of contract or for tort, or the specific performance of a contract; or to compel that person not to do something, e.g. when a prohibitory injunction is sought. A claim in personam may be negatively described as any claim which is not an Admiralty claim in rem, a probate claim, or an administration claim"

He also referred to Briggs, A., **Private International Law in English Courts, 2nd ed**., p.366;

> "…judgments determining the personal liability of the defendant to the claimant or vice versa…"

61. Mr Cumming submitted that it was evident from the face of the Judgment that it was a judgment against Julian and Gloria, determining their personal liability, and compelling them to pay money, and it falls squarely within the definition of a judgment *in*

personam. Again he said that this was entirely consistent with the express holding by the Tribunale di Sondrio that the action was to determine the defendants' personal liability;

> "The obligation of restitution borne by the defendant co-heirs is not of a joint nature, as it is a personal and therefore partial obligation, since it is addressed to the beneficiaries of the harmful provisions, not in order to claim the estate assets owned by them, but to ascertain the role of heir"

62. Mr Cumming then returned to address the point that there is nothing in the 1933 Act to prevent the English Court from recognising or enforcing a judgment in a matter relating to succession. He referred to an authoritative paper by Albury et al**., EU study on the international law of succession (England and Wales)**, EU Commission, p. 677;

> "There are no special rules in English law for the recognition or enforcement of foreign judgments concerning succession. There are general rules concerning the recognition or enforcement of foreign judgments, which may or may not (depending on the facts) cover some succession cases. If judgments rendered in succession cases fulfil the criteria laid down in these general rules, then they will be enforced or recognised in England and Wales"

63. Therefore Mr Cumming suggested the relevant question is not whether section 11(2) excludes judgments in succession actions but whether section 11(2) excludes the Judgment.

64. Mr Cumming submitted that the Judgment was not excluded for the following reasons;

i) The Italian proceedings were not concerned with either a grant of representation or the collection of the Deceased's estate. They were concerned with Julian and Gloria's personal obligation for their knowing misappropriation of Rita's share of the Deceased's assets.

ii) Article 533 of the Italian Civil Code, under which Rita's petition was brought supports the conclusion that the action was *in personam* because the purpose of the section is restitution which by its nature is a personal obligation.

65. Mr Cumming expanded on his point that Julian's case relies upon mischaracterisation or misunderstanding of the 1933 Act. Section 11(2) of the 1933 Act does not exclude, "*all matters concerning an estate*" or "*matters of succession*". Section 11(2) of the 1933 Act states that an action "*in personam*";

> "…shall not be deemed to include any matrimonial cause or any proceedings in connection with any of the following matters, that is to say, matrimonial matters, administration of the estates of deceased persons, bankruptcy, winding up of companies, lunacy, or guardianship of infants."

66. Mr Cumming noted only proceedings in connection with the **administration** of estates are mentioned as not being deemed to be actions *in personam*. It is instructive that all the other proceedings mentioned in section 11(2) – matrimonial matters, bankruptcy, winding up of companies, lunacy, or guardianship of infants – are traditionally regarded as *in rem* proceedings. In the circumstances he submitted that section 11(2) is intended to reflect the common law definition of actions *in rem*. It is not intended to be a material modification of that definition and it is not intended to be an exclusion of actions which would otherwise be actions *in personam*.

67. Mr Cumming submitted the inclusion of administration of estates, and the omission of succession, from section 11(2) was not an accident of drafting. It was deliberate for the following reasons;

i) The 1933 Act was not intended to fundamentally change the common law approach to the recognition of foreign judgments. The 1933 Act was a technical bill, which was the product of an expert report under the Chairmanship of Lord Justice Greer. (Hansard, HL Deb 14 February 1933 vol 86 cc 671-5). The driver was a concern that foreign judgments could be enforced in England by means of an action on the judgment at common law, with no equivalent method of enforcing English judgments abroad.

ii) English law makes, and has always made, a clear distinction between (i) the administration of estates; and (ii) succession more generally. See, for example, Williams, Mortimer & Sunnucks, *Executors, Administrators and Probate*, 21st Ed., 3.03:

> "As distinct from the law of administration of estates, the law of succession concerns the beneficial entitlement to, and distribution of, the deceased's estate after discharge of his or her liabilities."

iii) Respected works of commentary such as Dicey treat administration and succession as separate legal topics. The 5th edition of Dicey was published in 1932, i.e. the current version at the time of the 1933 Act. It makes it clear that the administration of estates was considered to be very distinct from succession:

> "Rule 75… In this Digest, unless the context or subject-matter otherwise requires,
>
> > (5) "Administration" means the dealing according to law with the property of a deceased person by a personal representative.
> >
> > (6) "Succession" means beneficial succession to the property of a deceased person."
> > …
>
> The terms "administration" and "succession" are purposely so defined as to be applicable to foreign countries (e.g. to France) no less than to England. The two things are essentially different, for the one means the dealing with a deceased's person's property according to law, the

> other the succeeding to it beneficially. And English law, in common with the systems which follow the law of England, emphasizes the distinction between administration and beneficial succession."

iv) There is therefore no purposive basis for construing "administration of estates" as being or including "succession", as it would be contrary to the wording and intentions of the 1933 Act.

68. Lastly, Mr Cumming addressed Mr Dew's submission that the judgment concerned immovable property situated in Chile such that the court did not have jurisdiction under section 4(3)(a) of the 1933 Act. First he submitted that the subject matter of the proceedings was not immoveable property. Immoveable property is not mentioned, and no specific property is identified. Again he relied upon the words of the Judgment;

> "THE PROCEEDINGS
>
> RITA DEL CURTO sued her siblings, the defendants, in order to ascertain and declare her status as the daughter of the deceased… with the consequent order to return, pursuant to Article 533 of the Civil Code her share of the hereditary property and assets or the equivalent in money of such property, with the relevant benefits…"

69. Mr Cumming submitted the Judgment does not determine or purport to determine title to any immoveable property, or make any declarations or orders in this regard. It does not declare that Rita is the owner of any immoveable property. It does not even order Julian and Gloria to transfer or give possession of the assets described in the Valuation Report. As for the contents of the valuation report the list of assets was not the "*subject matter*" of Rita's claim, and nor was it the entirety of the Deceased's estate. It was a pragmatic basis for an estimate of an indisputable sum of money owing to Rita. This is also clear from the terms of the valuation report which make clear that its purpose is to estimate the value of the Deceased's assets in order to quantify the monetary compensation due to Rita, not to provide a list of assets to be transferred.

70. Secondly, he submitted the Deceased's assets had long since been dissipated. It cannot reasonably be said the assets (immovable or movable) were "*the subject matter*" of the Italian proceedings when those assets had been sold and were, and would be, both as a matter of law, and practically, unaffected by the Italian proceedings. The subject matter of the proceedings was therefore not, in any relevant sense, immoveable property.

71. Thirdly, he submitted s.4(3)(a) of the 1933 Act reflects the common law rule, sometimes known as the corollary of the *Mocambique* rule, that, "*a court of a foreign country has no jurisdiction to adjudicate upon the title to, or the right to possession of, any immovable situate outside that country*" see, **Dicey, Rule 139**. The Dicey commentary on s.4(3)(a) notes that it is unlikely to affect the conclusion of cases as compared to the common law rule which is intended to reflect **Dicey at 24-064**. As already submitted the Judgment does not determine title to, or the right to possession of, any immovable property. In any event the Mocambique rule is itself narrow in scope, and it has been held, for example, that does not prevent an English Court from enforcing an equitable obligation notwithstanding that the subject matter of the claim is foreign

land, see for example; ***Penn v Lord Baltimore*** (1750) 1 Ves Sen 444, 27 ER 1; ***Lord Cranstown v Johnston*** (1796) 3 Ves Jun 169, 30 ER 952 at 182; ***Re Courtney, ex p Pollard*** (1840) Mont & Ch 239 at 250 and ***Hamed v Stevens*** [2013] EWCA Civ 911, at [16] and [19]-[24].

72. Lastly, Mr Cumming pointed out that an identical argument was made by Julian in the Italian proceedings, see the 2015 Jurisdiction Judgment**.** This argument was rejected by the Italian Courts, with the Court of Appeal noting that, due to the nature of the claim, it had jurisdiction because of the Deceased's citizenship, and not because of the location of the assets.

73. For all of the above reasons Ground 2 of the Set Aside Application was misconceived and must be dismissed

Discussion and conclusions

74. At common law a foreign judgment which creates an obligation that is actionable in England cannot be enforced except by commencing proceedings in which the foreign judgment is the cause of action. The Administration of Justice Act 1920 and the 1933 Act introduced statutory exceptions to the common law doctrine and enabled a judgment creditor to register a foreign judgment here as if it were an English Judgment.

75. When considering whether a judgment should be registered under the provisions of the 1933 Act I accept the submission of Mr Cumming that one must have regard to and apply the Act. This seems clear from the observation of Lord Justice Males in the ***Strategic Technologies*** case, see paragraph 46 above.

76. In ***In re International Tin Council*** [1987] Ch 419 Mr Justice Millett stated;

> "The making of a treaty is an act of the executive, not of the legislature, and it is therefore a fundamental principle of our constitution that the terms of a treaty do not, by virtue of the treaty alone, have the force of law in the United Kingdom. This does not mean that they are to be disregarded. Our courts take notice of the acts of the executive, and the terms of a treaty entered into by the United Kingdom may fall to be considered by them, either because Parliament has expressly or impliedly required them to be considered - as, for example, for the purposes of section 1(6) of the Act of 1968 - or to enable domestic legislation to be construed wherever possible in conformity with rather than in breach of pre-existing international obligations undertaken by the United Kingdom. But it does mean that the terms of a treaty cannot effect any alteration in our domestic law, or deprive the subject of existing legal rights, unless and until enacted into domestic law by or under the authority of Parliament. When so enacted, the court gives effect to the English legislation, not to the terms of the treaty. "

77. In the circumstances I also accept the submission of Mr Cumming that I should have regard to the Act and not to the terms of the Convention of 7 February 1964 between the United Kingdom and the Republic of Italy.

78. The first issue I have to determine is whether Master Eastman's order should be set aside because there is not "*payable under [the judgment] a sum of money",* such that it would be deemed to have jurisdiction in ss.4(2)(a) and 11(2);

79. I begin by noting the provision contained in CPR r 74.4 (e) that it is possible for a judgment to contain provisions which can be registered and others which cannot be registered.

80. The evidence concerning the judgment is set out at paragraphs 22 to 29 and 37 of the first witness statement of Michelle Duncan.

81. The Judgment of 4 February 2022 required Julian and Gloria;

> "… to return to [Rita], pursuant to Article 533 of the Civil Code, the assets and liquid assets, together with the proceeds thereof, which in the course of the legal proceedings formed part of the estate and to which she was entitled pro rata or the equivalent in money of such assets to the extent she was entitled pro rata, to be paid jointly and severally by the parties, taking account of the findings of the court expert's report, in any event for a value of not less than USD4,288,222.00, equal to EUR 2,760984, plus interest and revaluation 12.03.1983 to date in the amount indicated in the experts report."
>
> "[T]he Court orders the defendants to jointly and severally pay the plaintiff's legal costs, which have been set at EUR 103,236.00 for the phase of litigation on the merits…;
>
> EUR 35,844.00 for each of the two stages of the seizure and complaint respectively, plus lump-sum compensation for costs and statutory costs;
>
> EUR,1604.12 for transfers
>
> The Court orders the defendants to pay a sum equitably determined pursuant to Article 96 para.3 of the Code of Civil Procedure in the amount of EUR 50,000.000"

82. The Court appointed valuer's report was delivered on 1 March 2021. Inclusive of simple interest to 31 December 2020 the valuation report quantified the monetary equivalent of the estate's assets after revaluation to 3 December 2020 at USD 72,181206 or EUR 59,099,084. On the basis of the report, inclusive of simple interest to 31 December 2020, the judgment debtor was entitled to 2/9ths of USD 72,181,206 or EUR 59,099,084 which is USD 16,040,268 or EUR 13,133,129.77.

83. In addition to the sum of EUR 13,133,129.77 the judgment ordered the judgment to pay costs and legal expenses in the sum of EUR 140,684.2 and EUR 50,000 equitable compensation.

84. It is therefore possible to calculate the sums registered by reference to the court appointed expert's valuation report and reference to the Judgment of 4 February 2022.

85. I cannot accept Mr Drew's submission that the valuation report is not part of the judgment having regard to the express references in the Judgment to Julian and Gloria having to pay 2/9ths of "*the amount indicated by the court expert's report*", and the fact that the Judgment "*fully endorsed and adopted*" the Valuation Report, which it describes as "*detailed, well-reasoned, coherent, comprehensive*". I have been referred to no rule of law which prohibits reference to other documents to calculate the sum payable, particularly when those documents are specifically referred to in and adopted by the Judgment itself. Indeed it can be seen that reference to extrinsic materials is provided for by CPR r. 71.4(4)(f), in relation to interest. In the circumstances I reject the suggestion that it is a requirement of the 1933 Act that the precise sum payable be stated on the face of the Judgment.

86. Nor can I accept Mr Drew's submission that the primary obligation under the judgment is to restore the estate's assets in specie. Firstly as I have already observed it was common ground and clear from the court appointed expert's valuation report most of the estate's assets had been sold or dissipated. The only way in which the Judgment could be satisfied was by way of payment of money.

87. Thereafter ascertainment of the precise sum was a simple mathematical calculation of the type referred to in the case of ***Beatty v Beatty*** see, paragraph 52 above.

88. That is sufficient to dispose of the first point. This was a judgment under which a sum of money was payable.

89. I now turn to the second issue, that the Tribunale di Sondrio had no jurisdiction under s.4(1)(a)(ii) of the 1933 Act because either the action was not in *personam* or alternatively that the subject matter of the action was immovable property outside the jurisdiction of the Italian court.

90. The claim giving rise to the Judgment was brought under section 533 of the Italian Civil Code the agreed translation of this section provides;

> "For the purpose of obtaining restitution of the property, the heir can request recognition of his hereditary status against whomever possesses all or part of the heritable property under claim of heirship or without a claim of any kind"

91. Both Mr Dew and Mr Cumming recognised that the purpose of the section is to obtain restitution. Mr Dew sought to argue that this means restitution of a share of the assets not the payment of money. Mr Cumming argued, consistent with the judgment, that restitution is a personal obligation and in the circumstances of this case means either the return of the assets or their equivalent value. I have found against Mr Dew on the question of the judgment requiring the return of assets. I accept, as submitted by Mr Cumming, that a claim for a party to return assets does not automatically make a claim *in rem*.

92. In ***Webb v Webb*** [1991] 1 WLR 1410, the defendant purchased an apartment in the south of France in his own name. the plaintiff, his father, claimed that the apartment

was purchased as a holiday home for himself and his wife with funds provided by him, and that by virtue of an express agreement the defendant held the property on trust for him. The plaintiff also claimed that the apartment had been regularly used by himself and his wife since 1971 and that he had paid the outgoings and maintenance costs. He sought a declaration that the defendant held the apartment on trust for him, and an order that the defendant should execute the necessary deeds to vest the apartment in the plaintiff's name. The defendant applied to strike out the claim on the basis that proceedings with rights in rem in immovable property as their object exclusive jurisdiction was given to the courts of the contracting state in which the property was situated. The judge held dismissing the application, that the plaintiff's action had as its object not a right in rem but the establishment of the accountability of the defendant as trustee for the plaintiff. At 1418 E Judge Baker QC said:

> "I would therefore conclude that an order for specific performance of a contract relating to the sale of land abroad does not have as its object a right in rem in immovable property for the purposes of article 16. In the words of Professor Schlosser, the order does no more than specify acts to be done by the defendant so that the transfer of ownership may become effective.
>
> The plaintiff in the present case does not rely on any contract for sale. He relies on a fiduciary relationship between him and the defendant who, he says, is his trustee. That is one of the foundations of equitable jurisdiction, and here again the main method of enforcement is an order in personam against the defendant. He can be required to execute the trust by transfers or rendering accounts. The relief claimed does not include any form of vesting order, or an order directing the rectification of some register of title, or even a declaration that the plaintiff is the legal owner of the property. What the plaintiff claims is a declaration that the defendant holds the property and its contents on an express or resulting trust for him and an order to execute such deeds and documents as shall be required to vest the legal ownership in the plaintiff. There is an alternative claim for a declaration that the plaintiff is entitled to trace against the property in respect of FF. 600,000 applied by the defendant in its purchase. In the context of this case this is no more than saying that the defendant holds the property as trustee for the plaintiff, but in other cases where there has been an element of mixing there might be a question. An order, say, for a charge on the property in respect of the plaintiff's contribution might well be an action having as its object a right in rem; but that is not a matter before me."

93. In ***Akers v Samba Financial Group*** [2017] UKSC 6 Lord Sumption said [83]:

> "There are a number of reasons why the proprietary interest of the beneficiary may not be effective or enforceable. Obvious examples include cases where the property or its traceable

> proceeds have been transferred to a bona fide purchaser for value without notice; and cases where the property has been consumed or destroyed, or has ceased to be traceable. But that will not affect the beneficiary's personal rights, if any, against the trustee or his amenability to personal remedies. Those rights will remain enforceable, for example by an action for the restoration of the trust assets or for equitable compensation for their loss. The personal and proprietary rights of the beneficiary exist independently, and neither is dependent on the continued existence of the other. For this reason, the beneficiary's proprietary interest in property is of limited practical importance. It is relevant only as between the beneficiary and a third party, or for the purpose of asserting a prior claim to specific assets in an insolvency. Even then, equity acts in personam by requiring the trustee to perform his trust or a relevant third party to account."

94. I take it to be established law that the enforcement of equitable obligations are personal obligations and they are therefore actions *in personam.* I accept the submission of Mr Cumming that there is nothing whatsoever in the Judgment, or in any of the evidence, to the effect that that the Judgment was intended to bind, or affect, anyone other than the parties to it.

95. In any event even if a foreign judgment might be construed as a judgment *in rem*, if it contains orders which require a person to pay money or otherwise determine their rights and obligations *inter se,* then it may be recognised or enforced to that extent as a judgment which binds the parties *in personam,* see **Dicey 16th Ed 14-109**

> "The question whether a foreign judgment is in personam or in rem is sometimes a difficult one on which English judges have been divided in opinion. It has been suggested that unless the foreign judgment claims to operate in rem, it cannot be recognised in England as a judgment in rem, but as a matter of the English rules of the conflict of laws the real question is not the terminology used by the foreign court but whether the function of the foreign proceedings is "to determine rights and status as against the world". If the judgment might be construed as a judgment in rem, in which quality it would not qualify for recognition, yet also contains orders which require a person to pay money or otherwise determine their rights and obligations inter se, it may be recognised or enforced to that extent as a judgment which binds the parties in personam if it satisfies the requirements of Rule 47."

96. In my judgment Rita's action determined matters against Julian and Gloria and not the world. The Italian Courts did not determine any rights against the world or any third

party. The suggestion that Rita's action was an action *in rem* cannot be reconciled with the findings of the Italian Courts. The 2013 Jurisdiction Judgment and the 2019 Merits Judgment held that (1) Julian and Gloria's obligation was to make restitution or pay a monetary equivalent; (2) it was their personal obligation; (3) Rita's action was not a real action; (4) that it was not a claim to the estate assets owned by Julian and Gloria. Not even Mr Di Garbo, Julian's lawyer in the Italian proceedings, alleges that it is a Judgment *in rem.* Such a suggestion would be wholly inconsistent with all the judgments in the Italian proceedings.

97. Given my findings so far I cannot accept Mr Dew's argument that the proceedings were concerned with the administration of an estate and that registration is bared by the operation of s. 11 (2) of the 1933 Act. The analysis of Mr Cumming set out at paragraphs 61 to 66 above is to be preferred.

98. In the circumstances this disposes of the second point. The Italian judgment was *in personum* and not barred form registration by section 11 (2) of the 1933 Act.

99. I now turn to Mr Dew's third and last point, that the Judgment concerns immovable Chilean assets. I can dispose of this point relatively swiftly in view of my previous findings. The list of assets in the Valuation Report was not the "*subject matter*" of Rita's claim, and in any event it was not the entirety of the Deceased's estate. It was, as suggested by Mr Cumming, a pragmatic basis for an estimate of an indisputable sum of money owing to Rita. It is a matter of record that Julian failed to produce his own inventory or valuation of the estate, and Julian objected to letters rogatory, and insisted that the Valuation Report be confined solely to the unchallenged documents and appraisals filed in the case, which only related to assets in Chile.

100. Julian also made this argument in the Italian proceedings. It was rejected by the Italian Courts, with the Milan Court of Appeal noting that, due to the nature of the claim, it had jurisdiction because of the Deceased's citizenship, and not because of the location of the assets.

101. In the circumstances I decline to set aside Master Eastman's order providing for registration of the judgment of the Tribunale di Sondrio on the basis of either of the mandatory grounds set out in s.4(1) of the 1933 Act.