

Extra-territoriality: When can a foreign court transfer title to land in Canada?

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The Supreme Court of Canada has recently granted leave to appeal from the British Columbia Court of Appeal's decision in *Lanfer v Eilers*, [2021 BCCA 241](#) ("*Lanfer*"). The Plaintiffs/Appellants, the Lanfers, sought to enforce a foreign judgment granting specific performance for the transfer of land in British Columbia.

Facts

The Plaintiffs/Appellants are resident in Germany. They entered into an inheritance contract which provided that certain real property in Kelowna, British Columbia would be inherited by them upon the death of Herr Lanfer. However, in breach of the inheritance contract, the property in British Columbia was transferred to the Defendant/Respondent, Eilers (also a German resident), who refused to re-convey the property.

The German court ordered Eilers to transfer the title of the subject land to the Lanfers. However, despite exhausting all appeal rights, the Defendant/Respondent willfully disobeyed the terms of the German order and entered into a contract of purchase and sale by which the land was to be sold to a third party. Ultimately, that sale was not completed.

The Appellants then brought the within action seeking an order registering the German judgment in the Supreme Court of British Columbia and an order that upon proof to the registrar of land titles of payment, the property be conveyed to them in accordance with the German judgment.

Trial Decision

The issue before the trial court was whether foreign non-monetary judgements can be enforced outside the territory of the foreign court. Relying on *Duke v Andler*, [\[1932\] SCR 734](#), the trial court refused to recognize and enforce the foreign judgement. Until recently, *Duke* has been the leading common law authority pursuant to which a local court cannot recognize and enforce a foreign court's decision concerning local immovables. This follows the traditional view that that a Canadian common law court can only recognize and enforce monetary judgments.

Appeal Decision

The BCCA overturned the trial court's decision and stated that recent SCC decisions, including *Pro Swing Inc v Elta Golf Inc*, [2006 SCC 51](#), have overtaken and effectively reversed the decision in *Duke* such that common law courts may – and should – recognize and enforce certain decisions concerning immoveable property.

The BCCA held that the non-monetary equitable foreign judgments are capable of recognition and enforcement in Canada and there

is no reason, in principle, why the courts should categorically refuse to enforce them. The BCCA noted that the refusal to enforce the German judgment would only lead to further costly and unnecessary litigation.

Commentary

In granting leave to appeal, the SCC will be required to decide whether *Pro Swing* has in fact overtaken the longstanding decision in *Duke* and whether courts should, going forward, recognize and enforce foreign non-monetary judgements concerning immoveable property in Canadian courts.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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