



Appeal court finds that “non-final” U.K. order should be enforced in Ontario

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Ontario’s Court of Appeal recently recognised a U.K. High Court’s initial order in a scheme of arrangement aimed at winding up the reinsurance business of Cavell Insurance Company Limited.¹ It did so despite the fact that the U.K. court’s order did not meet the traditional requirement that only a *final* judgment of a foreign court for the payment of a definite sum of money will be enforced in Canada. In relaxing the traditional rules for the recognition and enforcement of the U.K. order, the Court of Appeal recognized the need for courts to take into account the ongoing evolution toward a global economy in dealing with a corporate restructuring that had international implications.

Similar to the orders typically made during restructuring proceedings under Canada’s *Companies Creditors Arrangement Act* (“CCAA”), the U.K. court’s order was far from final. It merely convened the first meeting of Cavell’s creditors and was the first judicial step in what would undoubtedly be a long process for the approval of a scheme to wind up Cavell’s worldwide reinsurance business. The U.K. order left open the possibility that its terms could be varied by future court orders. One of Cavell’s Canadian creditors/policyholders, Pilot Insurance Company, objected to the enforcement of an order that was not final. In addition, Pilot said that the U.K. order should not be enforced because Pilot had not been properly served with notice of the U.K. proceedings and because the U.K. court lacked a sufficiently real and substantial connection to the case to assume jurisdiction.

In rejecting Pilot’s objections, the Court of Appeal re-examined the traditional requirement that the

foreign judgment be final. In doing so, it cited the three reasons behind that rule, namely: (1) the need for the domestic court to know precisely what it is agreeing to recognize and enforce; (2) the need to avoid the injustice that will result if the foreign order that is enforced is subsequently changed; and (3) the risk of undermining public confidence should a domestic enforcement order be granted, only to have its foundation – the foreign order – subsequently disappear.

In this case, the Court of Appeal found that all three of these objectives would be served by recognizing the U.K. order. It was clear what exactly the court was recognizing and the risk of injustice from its enforcement was minimal, given that the order simply convened a meeting of creditors and did not compel Pilot to pay anything or do anything. Finally, the U.K. order was being recognised on terms requiring Cavell to advise the Ontario court of any changes to the procedures imposed by the U.K. court and to seek such further orders of the Ontario court that might be necessary as a result. As such, there was little risk of issuing a recognition order where its foreign foundation may disappear.

The *Cavell* decision is one of two recent decisions in which Ontario’s highest court has expanded on the types of foreign orders that might be recognised and enforced. In 2004, the Ontario Court of Appeal indicated in *Pro-Swing v. ELTA Golf Inc.*² that the traditional prohibition against enforcing foreign injunctions in Canada should be revisited. The Supreme Court of Canada’s decision on the appeal in that case is expected shortly. The decision in *Cavell* is merely the latest example of Canadian courts’ recognition that the ever-increasing

globalization of trade demands that court judgments, like goods and services, be permitted

to flow easily across international borders.



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¹ *In the Matter of an Application by Cavell Insurance Company under the Reciprocal Enforcement of Judgments (U.K.) Act and Rule 73 of the Rules of Civil Procedure, in Respect of a Scheme of Arrangement of Cavell Insurance Company Limited pursuant to Section 425 of the Companies Act 1985 of Great Britain* (Ont.C.A., Docket No. C43657, May 23, 2006)

² *Pro Swing Inc. v. ELTA Golf Inc.* (2004), 71 O.R. (3d) 566 (C.A.)