



## Should a foreign non-monetary judgment be enforced in Canada?

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That is question the Supreme Court of Canada will decide after granting leave to appeal from the decision of the Ontario Court of Appeal in *Pro Swing Inc. v. ELTA Golf Inc.*<sup>1</sup>

Traditionally, Canadian courts have only enforced foreign monetary judgments, in other words, judgments for a fixed sum of money. Canadian courts have not enforced other types of non-monetary foreign judgments, such as injunctions. Nevertheless, Pepall J. of the Ontario Superior Court of Justice granted summary judgment to Pro Swing for the enforcement of an Ohio non-monetary judgment against ELTA Golf, an Ontario company. Pro Swing had filed a complaint in the U.S. District Court of Ohio against ELTA Golf for various trademark violations. In July 1998, the parties signed a settlement agreement which was endorsed by the U.S. Court in the form of a consent decree that enjoined ELTA Golf from purchasing, marketing, selling or using golf clubs bearing the trademark.

In December 2002, Pro Swing learned that ELTA Golf was violating the consent decree and launched a civil contempt proceeding. On February 25, 2003, the U.S. Court found ELTA Golf in violation of the consent decree and issued a contempt order, including an order that ELTA Golf provide an accounting for profits derived from sales in breach of Pro Swing's trademark. ELTA Golf, however, did not comply with the contempt order. As a result, Pro Swing was not able to provide the U.S. Court with a proposed compensatory damages award. Pro Swing then moved to enforce the U.S. consent decree and contempt order in Ontario. In granting summary judgment to Pro Swing, Pepall J. held it

was appropriate to declare the consent decree and the contempt order valid and enforceable in Ontario because the consent decree was consensual in nature.

ELTA Golf successfully appealed to the Ontario Court of Appeal. In overturning the summary judgment, the Court of Appeal held that the motions judge erred because the consent decree and the contempt order were "ambiguous in respect of material matters" such as the critical issue of the scope of the extra-territorial application of the foreign orders. Even if the rules regarding the enforcement of foreign non-monetary judgments were relaxed, it found that a foreign judgment still has to be sufficiently certain in its terms so that an Ontario Court could enforce it without having to interpret it or vary it. However, the Court of Appeal did agree that the time is ripe to re-examine the rules governing the recognition and enforcement of foreign non-monetary judgments, such as injunctions or contempt orders.

It will now be up to the Supreme Court to decide how certain a foreign judgment has to be before it will be enforced in this country and whether Canada's rules regarding enforcement of foreign judgments will be broadened to include foreign judgments granting injunctions or other relief extending beyond the simple payment of money.

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1 For full text of Court of Appeal's reasons, link to:

[http://www.ontariocourts.on.ca/decisions/OntarioCourtsSearch\\_VOpenFile.cfm?serverFilePath=d%3A%5Cusers%5Cantari%20courts%5Cwww%5Cdecisions%5C2004%5Cjune%5CproC41279%2Ehtm](http://www.ontariocourts.on.ca/decisions/OntarioCourtsSearch_VOpenFile.cfm?serverFilePath=d%3A%5Cusers%5Cantari%20courts%5Cwww%5Cdecisions%5C2004%5Cjune%5CproC41279%2Ehtm)