Uncontested claims in European Enforcement Orders (RD v SC)

03/07/2019

Dispute Resolution analysis: The Court of Justice has interpreted Article 3(1)(b) of Regulation (EC) 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (the EEO Regulation). It ruled that courts are not able to certify a European Enforcement Order (EEO) where the defendant’s address is not known, and the defendant has not attended a hearing. Written by Natalie Todd, senior associate at PCB Litigation LLP.

What are the practical implications of this case?

EEOs are used by EU Member States to accelerate and simplify enforcement by dispensing with any intermediate measures necessary in the EU Member State in which enforcement is sought. A judgment that has been certified as an EEO by the court of origin should, for enforcement purposes, be treated as if it had been delivered in the EU Member State in which enforcement is sought.

Given the implications of certifying a decision as an EEO and the subsequent ease of enforcement, minimum protections should be afforded to a defendant before courts will certify decisions as EEOs. These protections cannot be said to be provided in circumstances where the address of a defendant is unknown and where the defendant has not actively participated in the proceedings. Practitioners should advise their clients that default judgments obtained in such circumstances will not be certified as an EEO.

Practitioners may also consider advising their clients to take steps to investigate domicile or whether alternate methods of service or notification could be sought (such as by use of an email address) although in many cases (as was the case here in relation to a €250 debt), such measures are likely to be disproportionate given the sums involved.

This is a disappointing decision which is likely to encourage debtors to seek to evade service.

What was the background?

The dispute relates to a debt which SC acknowledged that she owed to RD prior to the commencement of proceedings but did not pay. The Czech court was unable to ascertain SC’s address and so a guardian ad litem was appointed to represent SC. Neither SC, nor her guardian attended the hearing and judgment was awarded to RD. RD requested that the judgment be certified as an EEO. The Czech court refused to certify the decision as an EEO as the conditions for grant of such certificate (set out below) were not satisfied. RD brought an action before the Czech Constitutional Court arguing that the national court should have referred a question to the Court of Justice. RD argued that, in accordance with Regulation (EC) 805/2004, the EEO Regulation, a claim may be regarded as ‘uncontested’ if the debtor acknowledges the debt prior to the commencement of proceedings, and does not act in any way to oppose the claim, by failing to act on the request made to the debtor by the court to give written notice of their intention to lodge their defence or appear at the hearing. The Czech Constitutional Court referred the question to the Court of Justice.

What did the court decide?

The court referred to Article 12 of the Regulation (EC) 805/2004, the EEO Regulation, which makes clear that certifying a decision as an EEO is subject to two conditions:

- a decision must relate to an ‘uncontested’ claim within the meaning of point (b) or (c) of the second subparagraph of Article 3(1) of Regulation (EC) 805/2004, the EEO Regulation. That refers to the absence of any objection to the claim in the course of the judicial proceedings and the tacit recognition resulting from the fact that the debtor did not attend, or was not represented, at a hearing in relation to that claim
- the judicial proceedings must comply with the minimum procedural standards set out in Chapter III of the EEO Regulation. These are to ensure that the debtor is informed about: (i)
the court action against him and the requirements for his active participation in the proceedings to contest the claim, and (ii) the consequences of his non-participation in sufficient time and in such a way so as to enable him to defend them.

The court held that a default judgment issued in circumstances where it is impossible to ascertain the domicile of the defendant did not meet these minimum procedural standards. The court did not consider that the appointment of a guardian should affect the decision. A guardian ad litem could not be assimilated to the ‘debtor’s representative’ (on whom service may be effected) within the meaning of Article 15 of Regulation (EC) 805/2004, the EEO Regulation given that the debtor had not voluntarily authorised the guardian to represent her.

Due to the fact that the court had held that an EEO could only be granted on condition that the debtor’s address be known with certainty, they did not consider whether the claim could properly be considered as ‘uncontested.’

Case details
- Court: Court of Justice of the European Union
- Judge: C Toader, President of the Chamber, A Rosas and M Safjan (Rapporteur)
- Date of judgment: 27/06/2019