Neutral Citation Number: [2026] EWHC 2841 (KB)

Case No: CN43/25

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
FOREIGN PROCESS

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/11/2026

Before :

MASTER SULLIVAN

- -

Between :

Anne Elizabeth Proctor	**Claimant**
- and -	
(1) Fiona Helen Martin	**Defendants**
(2) Timothy Stephen Martin	

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- -

Anne Elizabeth Proctor in person
Maria Mulla (instructed by **Pennington Manches Cooper**) for the **Defendants**

Hearing dates: 16 September 2026

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Approved Judgment

This judgment was handed down at 12.40 on 4 November 2026 and by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MASTER SULLIVAN

Master Sullivan :

1. This my judgment in respect of the Defendants' application for a stay of execution of enforcement processes pursuant to CPR r.83.7(4) and to set aside the orders for recognition of a Portuguese Judgment (the Portuguese Recognition Judgment, "PRJ") pursuant to articles 45 and 46 of Regulation (EU) No. 1215/2012 ("the 2012 Regulations").

2. CPR 83.7(1) provides that a debtor liable to execution of a writ of control or warrant may apply to the court for a stay of execution. Subsection 4 provides that if the court is satisfied that there are special circumstances which render it inexpedient to enforce the judgment or order, the court many order stay of execution of the judgment or order, either absolutely or for such period and subject to such conditions as the court thinks fit.

3. Applications to refuse to recognise or enforce judgments under the 2012 Regulations were made under CPR74.7A, which is still in force for these purposes under transitional provisions. The European recognition of judgments scheme still applies in this jurisdiction for judgments given before 31 January 2020.

4. I am asked to set aside the recognition of the PRJ or to stay enforcement proceedings on a number of grounds including that to allow enforcement would be contrary to public policy or an abuse of process.

Factual Background

5. In March 2010, Ms Proctor obtained judgment against the Defendants for €35,000 in the Court of First Instance in Ayamonte, Spain (the Spanish Judgment). The Defendants were two of a number of Defendants. They did not appear at trial; they say because they did not have notice of the proceedings. The Defendants have not paid the sums under the judgment.

6. The Defendants had no assets in Spain against which the Claimant could enforce. The Claimant made an application in Portugal for recognition of the Spanish Judgement under EC Regulation 44/2001 ("the 2001 Regulations"). The date on which the application was made is disputed. The Claimant says she submitted the documents to the Portuguese court in 2013, the Defendants say it was on 9 September 2016.

7. The Portuguese Court made an order, the PRJ, on 20 September 2016 recognising the Spanish Judgment under the 2001 Regulations. A public notice of that order is dated 6 February 2019. That notice includes an address for the Defendants in Vila Real de Santo Antonio, Portugal. The Defendant's evidence is that they did not live at that address.

8. The Claimant then made an application in this jurisdiction ("The English Proceedings") pursuant to the 2001 Regulations on 19th July 2023 to recognise the Spanish Judgment. A registration order was made on 27th July 2023. The Defendants appealed the registration order on the basis that the Spanish Judgment was only enforceable for a period of 5 years, which period expired on 12 May 2016, meaning the Spanish Judgment had expired and was unenforceable by the time the application for registration was made.

9. That appeal was settled by consent in the following terms (as relevant):

> **"AND UPON** the Appeal having not been decided but being treated as allowed.
>
> BY CONSENT IT IS ORDERED THAT:
>
> 1. The Registration Order of Master Eastman dated 27 July 2023 be set aside.
>
> 2. No order as to costs"

10. An application for recognition of the PRJ in this jurisdiction was made in December 2025 under the 2012 Regulations and a certificate of recognition was sealed by this court of 17 December 2025.

11. As a result of that certification, the Claimant started various enforcement proceedings in this court, which are the subject of this application for a stay/set aside.

The European Legislation

12. The UK having left the EU, the procedures under the European Regulations only apply to judgments ordered before 31 January 2020. There are two relevant Regulations, 2001 and 2012, with slightly differing procedures which I deal with in reverse chronological order.

13. Article 39 of the 2012 Regulations provides that a judgment given in a member state that is enforceable in that member state, shall be enforceable in the other member states without any declaration of enforceability being required.

14. In our jurisdiction, a person seeking the enforcement of a judgment of another member state enforceable under the 2012 Regulations had to provide to the court the documents required by article 42 of the Regulation: an annex 1 certificate from the court of origin. The sealing of that certificate in the enforcing court is all that is required for enforcement to take place in the enforcing jurisdiction.

15. Judgments which can be enforced under this procedure are defined as:

> "any judgment given by a court …of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution as well as a decision on the declaration of costs."

16. Article 45 makes provision for recognition in the enforcing court to be refused on the application of any interested party on certain grounds:

    (a) if such recognition is manifestly contrary to public policy in the member state addressed;

    (b) where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his

defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;

(c) if the judgment is irreconcilable with a judgment given between the same parties in the member state addressed.

17. Article 46 provides that on the application of the person against whom enforcement is sought, the enforcement of a judgment shall be refused where one of the grounds referred to in article 45 is found to exist. The procedure to make such an application was provided for by CPR 74.7A. Those are the only matters that this court can take into account to refuse registration of the judgment.

18. Article 52 prohibits a review of the substance of the judgment to be enforced. The enforcing court can obviously look at procedural matters, such as service, in order to consider article 45 grounds.

19. The public policy ground is a narrow one. It only applies where the recognition would constitute a manifest breach of a right recognised as fundamental within the law of the enforcing state. An example would be the right to defend oneself in proceedings.

20. The PRJ was made under the 2001 Regulations, when registration of the judgment was required.

21. Article 38 of the 2001 Regulations provided that a judgment given in a member state and enforceable in that state shall be enforced in another member state when, on the application of any interested party, it has been declared enforceable there (save for in the UK, where it is registered for enforcement). That application in this jurisdiction also required provision of the annex 1 certificate as well as a formal application notice.

22. The definition of judgment is essentially the same as in the 2012 Regulations, and there were essentially the same provisions as articles 45 and 46. Any challenge to registration of the judgment was by way of appeal rather than application (as it is in the 2012 regulations).

23. Under both Regulations, the law as to enforcement of the member state applies, including grounds for refusal and suspension of enforcement.

The basis of the applications

24. The applications are made on a number of bases:

(i) Both the Spanish Judgment and the PRJ were given in default of appearance, and with no notice of the proceedings or judgments and therefore the registration order should be set aside pursuant to article 45(1)(a) and (b);

(ii) The Spanish Judgment is not enforceable in Spain due to effluxion of time. At the time of the PRJ, the Spanish Judgment was no longer enforceable so there was, and is no valid judgment to enforce under article 39;

(iii) As the Claimant has sought to enforce the Spanish Judgment here in the English Proceedings and agreed that the appeal against the registration order should be allowed, it is an abuse of process to seek to enforce using the PRJ;

(iv) As a matter of principle, a judgment on a judgement is not valid; the PRJ is not a substantive judgment; it is a judgment on a judgment which it would be contrary to public policy to enforce.

Service of Proceedings

25. It is common ground that the Defendants were served with the Spanish Judgment in 2022, in the course of the English Proceedings. The Defendants' position is that they received the PRJ in was in April 2026.

26. The Claimant's position is the Defendant's have known about the Spanish Judgment since 2022 and the PRJ since 2023 and so have had opportunity to challenge both judgments and therefore they have lost the right to challenge the PRJ on the basis that it was not served on them.

27. The Spanish Judgment was not served on the Defendants until August 2022. That is after the registration in Portugal. That would form a basis for challenging (in Portugal) the PRJ under article 45(1)(b) but is not a matter I can consider under article 45(1)(b).

28. The annex 1 which was filed in this jurisdiction for the PRJ to be automatedly recognised states that the decision was not made by default (in absence). That is clearly wrong. The PRJ was made without notice to the Defendant and when they were not present and without service of the relevant processes on them. That therefore may form a basis for challenging the recognition of the PRJ here pursuant to article 45(1)(b).

29. The question I have to decide is whether the Defendants have lost the opportunity to challenge the PRJ pursuant to article 45(1)(b), on the basis that the Defendants failed to commence proceedings to challenge the PRJ when it was possible for them to do so.

30. Mr Martin states in his witness evidence that he first became aware of the enforcement steps in relation to the PRJ in April 2026. However, it is clear the Defendants had seen the PRJ in 2023 as it is referred to in the witness statement in the English Proceedings of Mr Marshall, solicitor for the Defendants, dated September 2023. That witness statement exhibits the application notice for the registration of the Spanish Judgment which itself refers to and annexes the PRJ.

31. Counsel argued that it is likely nothing was done about the PRJ in 2023 because it was disclosed in the course of the English Proceedings which were dismissed and the Defendants thought that was the end of it.

32. Whilst I can understand that sentiment, it is not what is said in any witness statement. It does seem to me that the Defendants were served with the PRJ in 2023 and the question is then whether it was possible for them to challenge the PRJ in 2023.

33. I have not seen any evidence to say it was not possible to do so. Therefore, in my judgment, the protections given by article 45(1)(b) in respect of judgments in default of appearance, do not apply to the PRJ and the application to refuse recognition of the PRJ under article 45(1)(b) must be dismissed.

34. That is not a complete answer to the question of whether the recognition of the PRJ can be set aside under article 45. The Spanish Judgment was a judgment in default of

appearance following proceedings with which the Defendants were not in fact served. I accept that the Defendants were not aware of those proceedings until 2022.

35. According to the Spanish lawyer relied on by the Claimant, Amaya Arias, in a report dated 9 September 2025, article 501 of the Spanish Civil Procedure Act (LEC) provides that a Defendant declared in default may apply for recission of the final judgment by demonstrating they were unaware of the proceedings for reasons not attributable to them within 20 days of becoming aware of the judgment and in any event no later than four months after its publication. The Defendants rely on the evidence of a Spanish lawyer, Mr Lima. He has also referred to this in his evidence on behalf of the defendants in the English Proceedings. The four months referred to is from the publication of a public notice of the final judgment. He notes that article 502 LEC provides a longstop that states that the action for recission cannot be exercised after 18 months of the time of notice of the judgment.

36. The only evidence of when the public notice was given is that of Mr Lima, that it is usually a month after judgment and is in an official gazette, and would therefore have expired by 2022. That was part of the opinion in the appeal which was consented to. I accept the evidence of Mr Lima, it is consistent with the Claimant's evidence, and not challenged in the appeal, which is treated as allowed.

37. I accept the evidence that by 2022, when they became aware of the proceedings, it was not possible for the Defendants to challenge the Spanish Judgment.

38. In my judgment, in those circumstances, it would be manifestly contrary to public policy in this jurisdiction for the PRJ to be enforced. It would offend against article 6 of the European Convention on Human Rights for a judgment in a case in which the defendants had no ability to participate to be enforced in this jurisdiction. Looking at the procedural history of service of the Spanish Judgment does not offend against the prohibition on looking at the substance of the PRJ.

39. In case I am wrong about that, I will go on to consider the other arguments made.

Is the Spanish Judgment enforceable?

40. The applicants seek either that the registration order be set aside as the debt has expired, the Spanish Judgment no longer being enforceable, or a declaration that the effect of the registration order ended on the same date it was made, as the order made in *Olsen v Finansiel Stabilitet A/S* [2025] EWHC 42.

41. Whilst I cannot make any determination of the validity of the PRJ, nor can I refuse or revoke the PRJ on grounds other than those in article 45 and 46, grounds falling outside those limited matters may be relied upon at the stage of enforcement of the judgment. The Defendants' case is that the Spanish Judgment had expired before the application was made for the PRJ and therefore there was no enforceable judgment to recognise, and in any event the judgment is now not enforceable.

42. Amaya Arias, on behalf of the Claimant opines that article 239 LEC provides that expiration of proceedings does not apply in enforcement proceedings. It is said that implies that once enforcement proceedings have been initiated, procedural incapacity does not result in the expiration of the claim. They identify that the 2001 Regulations

do not establish rules of limitation, so the procedural law of the state of enforcement governs those matters. They go on to opine that once the judgment has been recognised and enforced in Portugal then enforcement is not precluded in that jurisdiction by procedural inactivity, save for any limitation periods prescribed in Portugal.

43. The evidence of Mr Lima in the English Proceedings was that the Spanish Judgment expires if enforcement action has not begun in 5 years after the judgment became final, pursuant to article 518 of the Civil Procedure Code. In his opinion it was not enforceable after 12 May 2016.

44. A statement from Portuguese lawyers, Alexandra Correia and Pedro Pereira, dated 11 August 2026 on behalf of the Defendants says that, having viewed the electronic Portuguese case file, the application for recognition was dated 9 September 2016 and the case number (304/16.0T8VRS) indicates it was commenced in 2016. They state there is no mechanism in Portuguese procedure by which an application could be received or accepted by a court in 2013 and yet remain unregistered, unnumbered and without any record on the court file until 2016 pending the supply of further identification details. Therefore, the Spanish Judgment was no longer enforceable at the time of the application.

45. An earlier statement from the same lawyers, dated 7 July 2026, states that an application for the recognition and declaration of enforceability of a judgment does not itself constitute a material act of enforcement of the judgment. In Portuguese law, a party could oppose enforcement proceedings on the basis that the Spanish Judgment was unenforceable.

46. The Claimant says that the application was submitted in November 2013 and relies on an email from her lawyer which stated that the certificate (which I assume is the annex V certificate) had been received and lodged in court. The Claimant says it took a while because there were issues with finding an address to serve the Defendants. She suggested the Portuguese court's electronic system may have been new in 2016 as an explanation.

47. In my judgment, it is not clear that the certificate submitted is the same application as that which led to the PRJ in 2016. There is no proper explanation as to why the decision was not until 2016, and why the court filing system says the application is dated 9 September 2016, and the court case number indicates it was commended in 2016. I find on the balance of probability that it was commenced in September 2016.

48. The Claimant has also argued that this court cannot make a determination on the date on which the Portuguese proceedings were commenced because that would be looking at the substance of the Portuguese decision. That is an incorrect interpretation of the court's function at different stages in my judgment.

49. As the Portuguese lawyers on behalf of the Defendants point out, and as occurred in *Olsen,* this court is able to look at procedural steps, which would include where one of the requirements of registration was absent, at the stage of enforcement. The annex 1 certification is a paper-based exercise, it is not a substantive decision on the facts which cannot then be considered in the enforcing court at this stage. The enforceability of a judgment in the originating state is a pre-condition of recognition in the enforcing state. Spanish law states that there is a five year limit for enforcement actions to be started

after which the right to enforce the judgment is extinguished. Having decided that that date was 12 May 2016, I find it had expired prior to the application for the PRJ.

50. I also accept the Defendants' position that, having consented to the dismissal of the appeal in the English Proceedings, in which this very point of the expiry of the judgment was taken, the claimant cannot now argue a different position. To do so would be inconsistent with the order in that case.

51. I conclude that the Spanish Judgment was not enforceable after 12 May 2016.

52. If I am wrong about the date of the application for the PRJ and it was made in 2013, there is no evidence that any enforcement steps have been taken in Portugal. Therefore the right to pursue the judgment would have expired in May 2016 in any event. That position is consistent with the Spanish law opinions provided by both the Claimant and the Defendants and the Portuguese law opinion for the Defendants that limitation does not expire if recognition **and** enforcement steps have been taken.

53. I note that the Portuguese law statement provided on behalf of the Claimant from Maria De Lurdes Mealha, dated 31 August 2026 is generic and does not address the issues of the enforceability of the Spanish Judgment and therefore is of no relevance to this issue.

54. It seems to me therefore that insofar as the registration order is not set aside, I should declare, as Kerr J did in Olsen, that its effect expired on the date of the registration order, and stay all enforcement absolutely.

Enforcement of a judgment upon a judgment

55. The Defendants submit that it is a legal principle of common law that a judgment on a judgment is not valid, and the recognition certificate CN43/25 is just that and should be set aside.

56. In common law, the position is that a judgment on a judgment is not valid and a recognition order of a foreign judgment is not converted into an enforceable foreign judgment by virtue of that recognition. The reasons are that;

    i) the effect of the proceedings to recognise a judgment will often only be to declare a third country judgment enforceable within the territory of the foreign court;

    ii) the judgment will not usually be on the meris of the case; and

    iii) because of the confusion liable to result if both the foreign judgment and the recognition judgment were to be enforceable.

57. The Defendants rely on *Strategic Technologies PTE Ltd v Procurement Bureau of the Republic of China Ministry of National Defence* [2020] EWCA Civ 1604, in which it was decided that the Administration of Justice Act 1920 did not permit registration of a judgment on a judgment.

58. The Claimant relies on a judgment of the European Court in *J v H* C-568/20 2022:264. In that case, a claim was commended in England for judgment on a series of Jordanian judgments. Summary judgment was given, and there was an application for

enforcement of that English judgment in Austria under the 2012 Regulations. The Austrian Court initially held that the principle that a judgment on a judgment was not valid applied. The European Court held that the English judgment should be recognised, it was an order for payment and therefore a judgment under the Regulations.

59. Paragraph 26 of the decision states, for judgments to be within the scope of the 2012 Regulations, it is sufficient if they are judicial decisions which, before their recognition and enforcement are sought in a state other than the state of origin, have been, or have been capable of being the subject in that state of origin and under the various procedure of an inquiry in adversarial proceedings.

60. I do not find *Strategic Technologies* to be of direct relevance as the AJA 1920 is a different statutory provision. In that scheme, the English court is able to scrutinise the proceedings in the court which gave judgment on the underlying dispute to ensure that the conditions for registration were satisfied. That is different to the 2001 and 2012 schemes.

61. Equally *H v J* does not determine matters as it refers to a judgment which is an order for payment. The Claimant argued that the PRJ was a judicial payment decision and quantified the debt. I do not accept that analysis. A judgment giving recognition of a foreign judgment under the 2001 or 2012 Regulations is not an order for payment. It is a declaration that the judgment of another state is enforceable in that jurisdiction.

62. The Regulations provide for mutual recognition of judgments so that the judgment can be enforced in all member states. It seems to me that what is being requested here is rather different. The PRJ is not a substantive judgment, it is not a judgment ordering any payment or action, it is no more and no less than a declaration that the Spanish Judgment is enforceable in Portugal. The question is whether, in the terms stated in *J v H*, the PRJ is a judicial decision which has been, or has been capable of being the subject of an inquiry in adversarial proceedings in Portugal. It seems to me it is not. As has already been discussed, the Portuguese Court is not able to review the substance of the Spanish Judgment, and there is no capacity for an inquiry into the order for payment in adversarial proceedings. The limited challenges to registration in the Regulations are not, in my judgment, such an inquiry.

63. In my judgment, the policy behind not recognising judgments on judgments as valid are shown here. If the Claimant's argument is correct, are there two judgments for the same sum? There could be confusion if both the foreign judgment and the recognition judgment were to be enforceable. What if there was a daisy chain of a number of recognition judgments?

64. Further, the situation in this case shows how inconsistencies could arise. The Spanish Judgment is unenforceable directly in the United Kingdon following the English Proceedings. It would undermine the principle of certainty and finality of judgments if the Spanish Judgment were then able to be enforced through a separate registration in Portugal.

65. In my judgment, the PRJ is not an enforceable judgment under the 2012 regulations, it would be an impermissible judgment on a judgment and its registration here should be set aside. If I am wrong about that, then I find that this is a matter which makes it

inexpedient to enforce the judgment and all enforcement action based on the PRJ should be set aside.

Abuse of process

66. The Defendants' position is that these proceedings are an abuse of process where the Claimant signed the consent order set out above, which states that the appeal shall be treated as being allowed. The basis of the appeal was the non -enforceability of the Spanish Judgment due to the passage of time. To seek to circumvent that by pursuing enforcement based on the PRJ – which was disclosed in the English Proceedings – is an abuse of process.

67. It seems to me that if the Claimant wished to rely on the PRJ as a basis for the enforcement of the Spanish Judgment, it was incumbent on her to make that argument in the English Proceedings. The Portuguese Proceedings were expressly mentioned in the application notice in the English Proceedings. That argument could have been made then and determined then. In my judgment it is an abuse of process to now seek to raise those arguments having consented to the appeal.

68. In those circumstances, the recognition of the PRJ is set aside as an abuse of this court's processes and in the alternative any enforcement steps are set aside on the same ground.