CITATION: Adamovsky v. Filipenko, 2025 ONSC 4850
COURT FILE NO.: CV-22-00685778-0000
DATE: 20250825

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: ANDREY ADAMOVSKY, Applicant

-AND –

IGOR YURIYOVYCH FILIPENKO, Respondent

BEFORE: L. Brownstone J.

COUNSEL: *Timothy Pinos, Kate Byers, and Sarah Kemp* for the Applicant
Sahar Talebi and Devon R. Kapoor, for the Respondent

HEARD: July 3, 2025

ENDORSEMENT

Introduction

[1] The parties are former business associates. Together, they engaged in business ventures in Ukraine, including an oil distribution business conducted using a group of Ukrainian companies collectively referred to as Vik Oil.

[2] Vik Oil was held by Charleston Investing Company, a company incorporated in the British Virgin Islands. Charleston sold Vik Oil to a BVI joint venture company. Mr. Adamovsky, the applicant, transferred the proceeds of that sale to Stockman Interhold SA, a corporation he controlled. The respondent, Mr. Filipenko, along with Mr. Malitskiy, the third shareholder in Vik Oil, sued Mr. Adamovsky and Stockman in the BVI, seeking their share of the proceeds of the Vik Oil sale.

[3] Just before the BVI court hearing, Mr. Adamovsky and Stockman sought leave to amend their counterclaim to seek rescission of the shareholders' agreement on which Mr. Filipenko and Mr. Malitskiy relied. The BVI court refused leave to amend, and suggested that the rescission claim would be more appropriately dealt with, "if anywhere", in the Ukrainian courts.

[4] The BVI court granted judgment against Mr. Adamovsky and Stockman on October 1, 2014. An appeal and cross-appeal were decided on February 3, 2017, resulting in a final BVI decision against Mr. Adamovsky and Stockman jointly and severally on that date ("the 2017 BVI judgment").

[5] In the meantime, Mr. Adamovsky and Stockman commenced their claim seeking rescission in the Ukrainian courts by way of counterclaim within another proceeding. Mr. Filipenko and Mr. Malitskiy asked the BVI court to restrain Mr. Adamovsky and Stockman from continuing their counterclaim in Ukraine. On November 19, 2014, before the BVI court issued a decision on the request to restrain, the Ukrainian court granted judgment in favour of Mr. Adamovsky and Stockman against Mr. Filipenko and Mr. Malitskiy jointly and severally ("the first Ukrainian judgment").

[6] Mr. Filipenko and Mr. Malitskiy did not pay the first Ukrainian judgment. Mr. Adamovsky and Stockman commenced a further proceeding to recover consequential damages arising from this non-payment. This proceeding resulted in a second Ukrainian judgment being granted against Mr. Filipenko and Mr. Malitskiy on May 18, 2017 ("the second Ukrainian judgment"). Mr. Filipenko appealed this decision. The final appeal decision dismissing his appeal was issued on March 12, 2018.

[7] Mr. Filipenko owed Mr. Adamovsky more under the Ukrainian judgments than Mr. Adamovsky owed Mr. Filipenko under the BVI judgment. In 2020, Mr. Adamovsky started an action to enforce the Ukrainian judgments in the BVI and to set off the amounts in the 2017 BVI judgment against the Ukrainian judgments. This litigation proceeded undefended, and on April 6, 2022, the BVI court granted default judgment recognizing and enforcing the two Ukrainian judgments and setting them off against the 2017 BVI judgment ("the 2022 BVI judgment").

[8] Mr. Adamovsky started the current application on August 5, 2022. In the notice of application, Mr. Adamovsky sought orders recognizing and enforcing the two Ukrainian judgments for their face amounts less the amount Mr. Adamovsky owed Mr. Filipenko under the 2017 BVI judgment. Although the notice of application set out the history of the actions, including the BVI set-off claim, it did not seek enforcement of the 2022 BVI judgment. In February 2025, Mr. Adamovsky advised Mr. Filipenko that he intended to amend his notice of application to seek to enforce the 2022 BVI judgment.

[9] Mr. Filipenko opposes the amendment. He argues the new relief sought is a "ricochet" or "derivative" judgment, as it is recognition and enforcement of another jurisdiction's recognition and enforcement decision. Such a ricochet judgment is prohibited. It is therefore not a tenable legal argument, and the amendment should be denied. Mr. Filipenko further argues that the recognition and enforcement of the Ukrainian judgments is statute-barred. In the alternative, if it is not statute-barred, the court should refrain from recognizing and enforcing the Ukrainian judgments because to do so would be contrary to Canadian standards of justice.

[10] The issues before this court are:

i. Is the amendment seeking recognition and enforcement of the 2022 BVI judgment permissible?

ii. Is recognition and enforcement of the Ukrainian judgments statute-barred or prohibited on natural justice grounds?

iii. Is recognition of the 2022 BVI judgment a "ricochet" or "derivative" judgment and therefore impermissible?

Issue one: Is the amendment seeking recognition and enforcement of the 2022 BVI judgment permissible?

[11] The notice of application, issued on August 5, 2022, seeks an order recognizing the two Ukrainian judgments and an enforcement order as follows:

> (c) [A]n order enforcing the Ukrainian Judgments as judgments of this Court against Filipenko for the following judgment amount:
>
> > (i) first, Canadian currency sufficient to purchase Ukrainian Hryvnia ("UAH") 748,205,985.02 (representing the amount of the First Ukrainian Judgment) and UAH 873,672,028.45 (representing the amount of the second Ukrainian Judgment), together with any accrued interest in accordance with the terms of the Ukrainian Judgments, and;
> >
> > (ii) second, less Canadian currency sufficient to purchase US $35,802,000, representing the amounts owing by Adamovsky to Filipenko pursuant to the BVI Judgments [defined as the October 1, 2014 and February 3, 2017 BVI judgments in favour of Filipenko].

[12] In February 2025, Mr. Adamovsky advised Mr. Filipenko that he wished to amend his application to seek "to the extent necessary, an order enforcing the Default Judgment Order", which is the 2022 BVI judgment. In his factum, Mr. Adamovsky explains that "[f]or absolute certainty, Adamovsky is also seeking recognition of the Default Judgment at the hearing of this application, since that decision reconciles the various judgments and establishes the net amount owing."

[13] When Mr. Filipenko was advised about the intended amendment, he responded that he needed time to tender evidence, including potential expert evidence, about the new relief sought. He subsequently filed a brief affidavit in response to the proposed amended notice of application stating that he was notified of the 2022 BVI judgment and took no steps to appeal it or set it aside.

[14] Mr. Adamovsky argues that in these circumstances, he is entitled to amend the notice of application as of right. Under r. 14.09, a notice of application may be amended in the same manner as a pleading. Affidavit materials in applications are to be considered as part of the pleadings: *1100997 Ontario Limited v. North Elgin Centre Inc*., 2016 ONCA 848, 409 D.L.R. (4th) 382, at paras 16–17. The fact that Mr. Filipenko responded to the amended application with an affidavit means that pleadings had not yet closed and no leave for the amendment to the notice of application is required: *Angeloni v. Estate of Francesco Angeloni*, 2021 ONSC 3084, at para. 31.

[15] Mr. Filipenko accepts that amendments are generally permitted, absent prejudice that cannot be compensated in costs. Mr. Filipenko argues the amendment should not be permitted because it is not tenable in law: *Brookfield Financial Real Estate Group Limited v. Azorim Canada*

(Adelaide Street) Inc., 2012 ONSC 3818, 111 O.R. (3d) 580, at para. 23. He argues the court can have recourse to the law governing motions to strike pleadings, and should not permit the amendment because it is plain and obvious that it cannot succeed: *Brookfield* at para. 24.

[16] This case is slightly different from *Angeloni*, in that Mr. Filipenko had delivered a responding affidavit to the original notice of application and supporting affidavit before the amendment was proposed. Indeed, Mr. Adamovsky had already delivered a reply application record before seeking to amend his notice of application. However, the amendment was proposed and responded to with a further affidavit before cross-examinations took place. At that time, there was nothing prohibiting Mr. Filipenko from providing his further affidavit evidence: r. 39.09(2).

[17] Even if Mr. Adamovsky requires leave to amend his pleading, I find the amendment should be permitted. I do not find the amendment to fall into the category of "hopeless claims" such that the amendment should not be permitted. The issue of derivative or ricochet judgments is uncommon, and Mr. Adamovsky should have the opportunity to argue the issue on its merits. There is no prejudice to Mr. Filipenko from permitting the amendment. The argument about the viability of the claim must be made, whether it is at the amendment stage or the merits stage. Given that this is not a preliminary pleadings motion, I find that there is nothing to be gained from determining this as a pleadings issue. The merits of the argument must be addressed. The most sensible way to do so is by considering the case on the basis of the amended pleading.

Issue two: Is recognition and enforcement of the Ukrainian judgments statute-barred or prohibited on natural justice grounds?

[18] The first Ukrainian judgment in the amount of UAH 748,205,985.02 was granted on November 19, 2014. The respondent unsuccessfully appealed the first Ukrainian judgment. It became final on September 28, 2015.

[19] On May 8, 2017, Mr. Adamovsky obtained the second Ukrainian judgment for an additional UAH 873,672,028.45, representing consequential damages arising from Mr. Filipenko's non-payment of the first Ukrainian judgment. Mr. Filipenko's first appeal of the second Ukrainian judgment was dismissed on September 21, 2017, and his second appeal was dismissed on March 12, 2018. Therefore, the second Ukrainian judgment became final on March 12, 2018.

[20] Subsection 5(1) of the *Limitations Act, 2002,* S.O. 2002, c. 24, Sched. B, provides that:

> 5(1) A claim is discovered on the earlier of,
>
> (a) the day on which the person with the claim first knew,
>
> (i) that the injury, loss or damage had occurred,
>
> (ii) that the injury, loss or damage was caused by or contributed to by an act or omission,

(iii) that the act or omission was that of the person against whom the claim is made, and

(iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and

(b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a)

[21] The regular two-year limitation period applies to a proceeding that seeks to recognize and enforce a foreign judgment. At the earliest, the limitation period starts to run from the date of the appeal decision: *Grayson Consulting Inc. v. Lloyd*, 2019 ONCA 79, 144 O.R. (3d) 507, at para. 28.

[22] Discoverability under s. 5(1)(b) in a claim seeking recognition or enforcement of a foreign judgment may refer to the time the claimant knew or ought to have known the judgment debtor has exigible assets in Ontario. The discoverability issue, including the appropriateness criterion in s. 5(1)(a)(iv) above, must be considered in each case, having regard to the particular factual context: *Independence Plaza 1 Associates, L.L.C. v. Figliolini*, 2017 ONCA 44 (2017), 136 O.R. (3d) 202, at para. 82.

[23] Mr. Filipenko argues that Mr. Adamovsky knew that Mr. Filipenko owned property in Ontario in 2016, based on other litigation involving a corporation called Norius. Mr. Adamovsky denies any involvement with Norius. However, he does not argue that he only discovered that Mr. Filipenko had property in Ontario at some later date that would result in an extended limitation period.

[24] Rather, Mr. Adamovsky argues that the claim was not discoverable in that it was not legally appropriate under s. 5(1)(a)(iv) until there was a definite sum of money owing, which was not until the 2022 BVI judgment was rendered. Mr. Adamovsky argues that he was not able to move to enforce the Ukrainian judgments until the amount was a "sum certain". The "sum certain" was only known once the BVI court permitted the set-off to occur in the BVI 2022 judgment.

[25] Mr. Adamovsky argues that the proceedings in the foreign jurisdictions were intertwined. The BVI court had, for example, refused to permit him to pursue his claim for rescission of the shareholders' agreement, holding that it would be more appropriately dealt with in the Ukrainian courts. Mr. Adamovsky then did exactly that and, having obtained judgment in the Ukrainian courts, returned to BVI to have the judgments set off against one another. It would not have been appropriate within the meaning of the *Limitations Act* to commence proceedings in Ontario before this exercise had been completed. Otherwise, he would have been engaging in the unnecessary litigation the *Limitations Act* is designed to deter: *Independence Plaza* at para. 80; *407 ETR Concession Company Limited v. Day*, 2016 ONCA 709, 133 O.R. (3d) 762, at para. 48.

[26] I do not agree. Indeed, Mr. Adamovsky's notice of application in this matter demonstrates that the opposite is true. The notice seeks to enforce the two Ukrainian judgments in the usual

method – by obtaining an order from this court for sufficient sums in Canadian dollars to purchase Ukrainian Hryvnia in the amounts ordered in the two Ukrainian judgments. The application then asks that the resulting sum be decreased by Canadian currency sufficient to purchase the US dollar amounts awarded in the 2017 BVI judgment.

[27] All these sums were known and certain in 2018. Their calculation does not in any way depend on the 2022 BVI judgment. Mr. Adamovsky had a "fully ripened claim" as of the date the Ukrainian judgments became final. That was the legally appropriate time to begin his claim: *Pepper v. Sanmina-Sci Systems (Canada) Inc.*, 2017 ONCA 730, 283 A.C.W.S. (3d) 405, 74 C.C.L.I. (5th) 171, at para. 5. He may have felt that it was tactically appropriate to commence proceedings in BVI and not Ontario, but that does not render it legally appropriate within the meaning of the *Limitations Act*.

[28] That is, there is no reason he could not bring an application seeking to enforce the Ukrainian decisions, with or without seeking the set-off of the BVI judgment, within two years of the Ukrainian decisions becoming final. Taking into account O.Reg. 73/20 made under *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, this would have required that the application be brought no later than September 15, 2020. It was launched almost two years after the expiry of the limitation period.

[29] I find that recognition and enforcement of the two Ukrainian judgments is statute-barred.

[30] For the sake of completeness, I will address Mr. Filipenko's alternative argument raised in his factum but not in oral argument that, if the relief is not statute-barred, the court should refuse to recognize the Ukrainian decisions as they fail to meet the common law test for recognition and enforcement.

[31] To recognize a foreign judgment, the court must be satisfied that the foreign court was a court of competent jurisdiction, properly exercising jurisdiction over the claim, that the judgment is final and conclusive, and that no defences available to a domestic defendant — fraud, public policy, or lack of natural justice — are available to the defendant.

[32] Mr. Filipenko acknowledges that the Ukrainian court properly took jurisdiction over the claims and the decisions are final and binding. However, he argues that the decisions offend notions of fundamental justice. He asks this court to conclude that there was a lack of judicial independence and ethical rules in the Ukrainian decision. To support this contention, he argues that the Ukrainian decisions are inconsistent with the BVI decision, that the first Ukrainian judgment was sought and awarded very quickly after the 2017 BVI judgment, and that the Ukrainian judgments in effect reverse the outcome of the 2017 BVI judgment, resulting in Mr. Filipenko owing funds to Mr. Adamovsky.

[33] To the extent Mr. Filipenko is asking me to draw the rather extraordinary inference that another nation's judiciary rushed a decision for some improper purpose, I firmly decline to do so. To the extent he is asking me to find that the decision is incorrect, I again decline. In enforcing a foreign judgment, this court does not look behind the judgment to the merits of the case: *Pro Swing*

v. Elta Golf Inc., 2006 SCC 52, [2006] 2 S.C.R. 612, at para. 89, per McLachlin CJC dissenting, but not on this point.

[34] To the degree Mr. Filipenko is arguing that the court should decline to enforce the Ukrainian judgments because he had no notice of the proceedings, I reject his assertion. Counsel for Mr. Malitskiy, Mr. Filipenko's business associate and co-litigant in all the related proceedings, was present throughout the Ukrainian proceedings. Mr. Filipenko acknowledges being in contact with Mr. Malitskiy regarding Mr. Adamovsky during the time of the Ukrainian litigation. Further, Mr. Filipenko was a claimant on November 5, 2014, in which claim he asked the BVI court to restrain Mr. Adamovsky and Stockman from continuing their counterclaim in Ukraine, with specific reference to the Ukrainian court file number. On November 5, 2014, Mr. Filipenko, as claimant, filed a certificate of urgency in the BVI, which states that the claimants became aware of the Ukrainian proceedings' existence on October 13, 2014, 11 days after they were commenced. Finally, the Ukrainian courts found that Mr. Adamovsky had notice of the proceedings. His claim that he did not have notice was argued before and rejected by the Ukrainian appellate courts.

[35] I find Mr. Filipenko has failed to demonstrate that there has been any breach of natural justice that would provide him a defence to the enforceability of the Ukrainian judgments.

Issue three: Is recognition of the 2022 BVI judgment a "ricochet" or "derivative" judgment and therefore impermissible?

The 2022 BVI judgment

[36] Mr. Adamovsky's claim before the BVI court, from which the 2022 BVI judgment resulted, requested that "orders should be made giving effect to, and enforcing, judgments obtained by the Claimants against the Defendants in Ukraine and that Judgment should be entered: (1) In the sums of $49,224,077.96 and USD $32,981,201.52." The claim states that these sums are equivalent to the sums in the Ukrainian judgments. The claim also sought a declaration that the sum be set off against the BVI judgments.

[37] The statement of claim pleaded that the Ukrainian courts had jurisdiction to entertain the proceedings and were duly constituted, that they had jurisdiction over the subject matter of the claim, and that the Ukrainian orders were final and conclusive. The statement of claim states, "[a]ccordingly, the First and Second Judgments are entitled to recognition at common law." The claim then asserts entitlement to set off the claimants' liabilities to Mr. Filipenko under the 2017 BVI judgment against the Ukrainian judgments.

[38] The BVI order was obtained as a default order, which contains recitals but no reasons. The recitals include the following:

> AND UPON THE COURT being satisfied that the liabilities which the First and Second Defendants have to the Claimant and the Third Defendant (Stockman) under the terms of a judgment of the Holosiyivskyi District Court dated 19 November 2014 (the First Ukrainian Judgment) and under the terms of a judgment of the Podilskyi District Court dated 8 May 2017

> (the Second Ukrainian Judgment) are to be enforced in this Territory (the Ukrainian Judgments)
>
> AND UPON THE COURT being satisfied that the Claimant and the Stockman's liabilities to the First and Second Defendants under orders of this Court in BVHCM 51/2012 and on appeals arising from those proceedings should be set off against the Claimant and Stockman's liabilities under the terms of the Ukrainian Judgments and that in the exercise of the Court's discretion, the date upon which the currency conversion takes place should be that pleaded.

[39] The Court went on to order Mr. Filipenko and Mr. Malitskiy to pay jointly and severally the sums of USD $49,224,077.96 and USD $32,981,201.52 plus interest. The BVI orders of 2014 and 2017 in favour of Mr. Filipenko and Mr. Malitskiy were then ordered to be set off against the above figures. The court held that after the various liabilities and interest were calculated and set off, Mr. Filipenko owed Mr. Adamovsky $ 32,780,711.12 as of May 8, 2017.

[40] As noted above, Mr. Adamovsky's original application before this court seeks the same relief he sought from the BVI court in 2020 — to recognize and enforce the Ukrainian judgments, converted from Ukrainian currency, less the amount of the BVI judgment. Although the amendment asks for an order enforcing the 2022 BVI judgment, nowhere does the amended notice of application state that Mr. Adamovsky is seeking sufficient Canadian funds to purchase $32,780,711,12, the amount of the 2022 BVI judgment.

Position of the parties

[41] Mr. Filipenko, relying on the Court of Appeal for Ontario decision in *H.M.B. Holdings Limited v. Antigua and Barbuda*, 2022 ONCA 630 ("*H.M.B. Holdings*"), argues that Mr. Adamovsky is asking this court to enforce a "ricochet" or "derivative" judgment, which is prohibited.

[42] Mr. Adamovsky argues that this case is not a simple ricochet or derivative judgment. The BVI court was not simply enforcing a foreign judgment. Rather, it was applying substantive legal analysis to determine that setoff is appropriate. Further, it was the final word on the interrelated litigation between the parties in the two jurisdictions.

Governing Law and Analysis

[43] In *H.M.B. Holdings*, the Attorney General of Antigua and Barbuda had expropriated property in Antigua and Barbuda that was owned by HMB Holdings Limited. H.M.B. obtained a judgment from the Judicial Committee of the Privy Council awarding H.M.B. compensation for the expropriation. H.M.B. obtained a default judgment in British Columbia recognizing and enforcing the Privy Council judgment. It then sought an order in Ontario under the common law seeking recognition and enforcement of the British Columbia action in Ontario, its application and appeals under the *Reciprocal Enforcement of Judgments Act*, R.S.O. 1990, c. R.5, having been

unsuccessful: see *H.M.B. Holdings Ltd. v. Antigua and Barbuda*, 2021 SCC 44, 462 D.L.R. (4th) 642, aff'g 2020 ONCA 12, 149 O.R. (3d) 440, aff'g 2019 ONSC 1445, 145 O.R. (3d) 515.

[44] In *H.M.B Holdings*, the Privy Council decision had become final on May 27, 2014. Antigua paid part, but not all, of the amount owing under the judgment. On October 25, 2016, more than two years after that judgment was issued, H.M.B. brought its action in British Columbia, which had a ten-year limitation period for recognition and enforcing foreign judgments at common law. The British Columbia decision was issued on April 7, 2017. Antigua did not seek to appeal or set aside that judgment.

[45] In May 2019, two months after it lost its application seeking enforcement under the *Reciprocal Enforcement of Judgments Act*, but while the appeals of that decision were pending, H.M.B. started an action in the Ontario Superior Court seeking to register the B.C. judgment under the common law. Antigua brought a motion for summary judgment seeking to dismiss the action.

[46] In finding the action should be dismissed, the court concluded that the common law test for the recognition and enforcement of foreign judgments does not "contemplate the viability of ricochet judgments".

[47] The Court of Appeal, relying upon and summarizing the general principles set out in *Morguard Investments Ltd. v. De Savoye*, 1990 CanLII 29 (SCC), [1990] 3 S.C.R. 1077, *Beals v. Saldanha*, 2003 SCC 72, [2003] 3 S.C.R. 416, and *Chevron Corp. v. Yaiguaje*, 2015 SCC 42, [2015] 3 S.C.R. 69, reaffirmed that the real and substantial connection test applies to the recognition and enforcement of foreign judgments by Canadian courts. That is, the court that is being asked to enforce the original judgment will satisfy itself that the original jurisdiction had a real and substantial connection with the defendant or the subject-matter of the litigation.

[48] However, the enforcing court does not probe the merits of the original claim. Further, no link is required between the enforcing jurisdiction and the foreign dispute. The judgment that recognizes and enforces a foreign judgment has a limited and local impact: *H.M.B. Holdings* at paras. 25–31.

[49] The Court of Appeal stated at para. 33:

> While comity requires respect for the jurisdiction that granted the original judgment, the concern over comity does not arise in the same way with respect to recognition and enforcement judgments. Focusing the inquiry on whether Ontario courts should recognize and enforce the BC Judgment rather than the Privy Council Judgment circumvents what should be the focus of the inquiry, namely whether the law in Ontario is available to assist H.M.B. access assets in Ontario to satisfy the Privy Council Judgment.

[50] The court emphasized at paras. 33–34 that the significant difference between an original judgment and a recognition and enforcement judgment is that the former depends on a

jurisdiction's real and substantial connection with the dispute; the latter is local and is concerned only with enforcement.

[51] The question before this court, then, is whether the 2022 BVI judgment was a recognition and enforcement decision, in which case the issue of comity does not arise, or whether it was a substantive decision that should be recognized and enforced in Ontario as a matter of comity*: H.M.B. Holdings* at paras. 37, 39, 43.

[52] Mr. Adamovsky's entitlement to payment from Mr. Filipenko did not arise from the BVI decision. His entitlement arose from the Ukrainian decisions. The 2022 BVI judgment does not create a new obligation that this court is asked to enforce: *Pro Swing* at para. 89 per McLachlin CJC dissenting but not on this point; *Wei v. Mei*, 2018 BCSC 1057 at para. 10; aff'd 2019 BCCA 114. Put differently, the purpose of a recognition and enforcement action is to allow a pre-existing obligation to be fulfilled: *Chevron* at para. 42. The obligation in this case does not arise from the 2022 BVI judgment, but from the Ukrainian judgments.

[53] There are no reasons for the decision of the BVI court in the 2022 BVI judgment, and no evidence of the materials filed, or argument made in support of that decision, other than the claim itself. Reviewing the claim and the judgment, I conclude the BVI court's essential task was recognizing and enforcing the Ukrainian judgments, and then engaging in a simple mathematical exercise, the same one Mr. Adamovsky asks this court to do.

[54] Mr. Adamovsky's application to this court is, in substance, a request that this court recognize and enforce the Ukrainian judgments, with or without set off from the 2017 BVI judgment. That relief is spelled out in his notice of application. He seeks to add only "to the extent necessary" recognition and enforcement of the 2022 BVI judgment. That judgment has several components other than the payment of sums. He does not see recognition or enforcement of those terms. In substance, he asks this court to recognize and enforce judgments, the latest of which became final in 2018.

[55] Applying the reasoning of para. 33 of *H.M.B. Holdings* set out above, Mr. Adamovsky is asking whether the law in Ontario is available to assist him in accessing assets to satisfy the Ukrainian judgments.

[56] Mr. Adamovsky argues that his application does not offend the policy rationale identified in *H.M.B. Holdings* for not recognizing and enforcing derivative judgments. For example, the court in *H.M.B. Holdings* expressed its concern that allowing H.M.B. to proceed sequentially would allow it to circumvent the shorter limitation period in Ontario, and extend it by the ten years British Columbia allowed for a recognition and enforcement action. Mr. Adamovsky argues that there is no evidence that BVI has a longer limitations period than does Ontario; thus, there was no advantage of the kind that was at play in *H.M.B. Holdings* in this case.

[57] However, the effect is the same. Recognizing and enforcing the BVI decision does, in fact, extend the Ontario limitation period for recognition and enforcement of the judgments that created Mr. Adamovsky's entitlement, which would have expired in 2020.

[58] I find the 2022 BVI judgment is, in substance, a judgment recognizing and enforcing the Ukrainian judgments. Therefore, the application seeks to enforce a derivative judgment, which is prohibited.

[59] The application is therefore dismissed.

Costs

[60] Fixing costs is a discretionary exercise under s. 131 of the *Courts of Justice Act*, R.S.O. 1990 c C. 43. Rule 57 outlines, in a non-comprehensive list, factors that guide the exercise of this discretion. Relevant factors include the results of the proceeding, the principle of indemnity, the amount an unsuccessful party could reasonably expect to pay, the complexity of the proceeding and the importance of the issues. In addition, offers to settle have costs implications.

[61] Ultimately, I must fix an amount of costs that is proportionate, and that is fair and reasonable for the unsuccessful party to pay: *Boucher v. Public Accountants Council for the Province of Ontario*, 2004 CanLII 14579 (ONCA), 71 O.R. (3d) 291 (C.A.), at para. 26. A costs award should "reflect what is reasonably predictable and warranted for the type of activity undertaken in the circumstances of the case, rather than the amount of time that a party's lawyer is willing or permitted to expend": *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587, at para. 65, leave to appeal refused, [2022] S.C.C.A. No. 387.

[62] The respondent filed a bill of costs seeking partial indemnity costs of $175,336.45. He argues that the application was a matter of some complexity for a significant dollar amount. The argument was scheduled for a full day, cross-examinations of three witnesses were required, and the application involves an extensive legal history in multiple jurisdictions. He argues that the sum sought is proportionate and reflective of the value and importance of the case.

[63] The applicant's bill of costs reflects partial indemnity costs of $34,546.48. He agrees the issues are important and somewhat complex. He notes that the respondent increased costs and delay by, among other things, evading service and requiring the applicant to obtain an order for substituted service. He argues that the respondent's costs are disproportionate to the scope of the application and that his exhibits were substantially duplicative of the applicant's. He submits that $35,000 is a reasonable costs award.

[64] I find that the respondent's bill of costs is disproportionate to the matter's length and level of complexity. The hours spent were many multiples of the hours spent by the applicant's counsel. While I do not diminish the importance and time-consuming nature of preparation for court applications, I find that the time spent and amount claimed are disproportionate to the size and moderate complexity of this application. Applying the factors in rule 57.01 and the principles of proportionality, predictability, reasonable expectations, and fairness, I order the applicant to pay the respondent $70,000, inclusive of disbursements and HST.

L. Brownstone J.

Date: August 25, 2025