OUTER HOUSE, COURT OF SESSION

[2025] CSOH 41

CA1/24

OPINION OF LORD BRAID

In the cause

PAPEL PAYMENT SERVICES PROVIDER LLC

Pursuer

against

MONITOX LIMITED

Defender

Pursuer: Frain-Bell KC, K Young; MBM Commercial LLP
Defender: Tosh; CMS Cameron McKenna, Nabarro and Olswang LLP

1 May 2025

The issue

[1] In this commercial action the pursuer seeks orders to enable it to enforce a judgment it obtained *ex parte* against the defender in the Dubai Commercial Court of First Instance. The issue is whether such orders would offend against Scots law principles of natural justice in circumstances where, so claims the defender, it had no effective opportunity to challenge the payment order which led to that judgment, either before or after it was granted.

Background

[2] The defender Monitox Ltd, a limited company registered in Scotland, is an electronic money institution which provides services, including electronic wallets, to individuals and

businesses. On the evidence led before me, its sole place of business is London. Its sole shareholder at the material time was Maksim Asanov. The pursuer, Papel Payment Services Provider LLC, a limited liability company registered in Dubai, is, as its name suggests, a services provider to companies in the financial services industry. It is owned by Ferit Samuray, who is also a director.

[3] In about 2021 or 2022, Mr Samuray agreed to acquire Mr Asanov's shareholding in Monitox. That deal subsequently soured, and is currently the subject of separate litigation in this court. However, there was a period when Mr Samuray was also a director of Monitox. During that period, apparently at Mr Samuray's instigation, Papel entered into a Supply of Services Contract with Monitox, ostensibly dated 4 January 2023 (although not signed until May 2023), whereby Papel was to provide a variety of services to Monitox, including human resources, finance, technological and legal services. In terms of clause 10.10, the contract was governed by the law of the United Arab Emirates, while clause 10.11 provided that the courts of the Emirate of Dubai were to have exclusive jurisdiction to settle all disputes or claims arising out of the contract.

[4] Following the breakdown of the relationship between Mr Samuray and Mr Asanov, Papel terminated the contract and submitted two invoices. I discuss that process more fully below, but those two invoices not having been paid, it is a matter of agreement that Papel sought and obtained, by means of an application for a payment order, a judgment of the Dubai Commercial Court of First Instance. On 30 September 2023, Dr Hamdah Abdullah Qutami Al Suwaidi, sitting as a Judge of the Dubai Commercial Court of First Instance, ordered that the defender pay to the pursuer: (i) US$130,725.00; (ii) £26,874.99; (iii) interest on those sums at the rate of 5% from 7 July 2023 to the date of payment; (iv) fees and expenses; and (v) AED 1,000 as attorney fees. That judgment was obtained under the

payment order procedure available under Part 11 of the United Arab Emirates' Federal-Decree Law No 42/2022 Promulgating the Civil Procedure Law (CPL), discussed more fully below. Any appeal against the payment order had to be lodged with the relevant court in Dubai within 30 days of the date of the payment order (ie by 30 October 2023). No appeal has been lodged and an appeal will not be accepted out of time, with the result that it is no longer possible for Monitox to challenge the payment order in Dubai.

[5] Papel now seeks to enforce the judgment in Scotland at common law, and is suing for decree conform; in other words, for declarator that it is entitled to payment of the sums awarded in the Dubai Commercial Court. That is opposed by Monitox, now on the sole ground that the judgment bears to have been pronounced in circumstances which offend against the principles of natural justice recognised in Scotland, other lines of defence having been dropped in light of the defender's expert report, referred to below. I will hereafter refer to the parties as the pursuer and defender respectively, except where the context otherwise requires.

[6] The action called before me for proof. For the pursuer, evidence was given by Paul Hogarty, the pursuer's general counsel; and for the defender, by Mr Asanov; Mr Abdulle; and by Mr Ali Ismail Al Zarooni, a lawyer in the UAE, who gave expert evidence about the law of the UAE. As a licensed lawyer with rights of audience before the domestic Court of First Instance, Court of Appeal and Court of Cassation in all the Emirates of the UAE as well as the Federal Supreme Court of the UAE, Mr Al Zarooni is well versed in all aspects of UAE federal law and the specific laws and regulations of the various Emirates including Dubai and Abu Dhabi, and I accept that he was eminently qualified to give expert evidence. The evidence was given primarily by witness statements (or, in Mr Al Zarooni's case, his report) on which the witnesses were cross-examined. With the exception

of parts of Mr Abdulle's evidence which I discuss below (on which nothing ultimately turns), I found the witnesses to be credible and reliable.

UAE Law

[7] It is convenient to begin with a description of UAE law, as it applies in this case and as described by Mr Al Zarooni in his report, the terms of which the pursuer did not challenge, and in his oral evidence.

[8] Mr Al Zarooni explained that payment order legislation was introduced as part of the UAE's procedural laws, to provide a swift and efficient mechanism for creditors to recover undisputed debts, in response to the growing need for expedited debt recovery processes in commercial and financial transactions, reflecting the UAE's, and particularly Dubai's, role as a global business and financial hub. It was designed to minimise delays in debt recovery, offering creditors a fast-track route to enforcement without prolonged legal proceedings, and it serves as an efficient alternative to traditional claims for specific debts. The legislature intended to streamline the process by establishing a simple procedure enabling creditors to obtain an immediate *ex parte* judgment when they are in possession of a clear and unequivocal acknowledgment of debt for a fixed amount of money.

[9] The procedure is set out in Articles 143 and 144 of the UAE CPL, as interpreted and explained by certain decisions of the Dubai Court of Cassation. In essence, there are three key elements: the debt must be for a fixed amount and unequivocally acknowledged by the debtor; a notice (in the form of a demand for payment) must be sent to the debtor specifying the exact fixed amount and allowing a period of 5 days for payment; and if the debtor does not make payment within that period, the creditor can submit a petition to the court to seek an *ex parte* judgment within 3 days. In 2018, Cabinet Resolution No. 57 of 2018 expanded the

scope of the payment order procedure to cover all admitted debts, not only those arising from the possession of a financial instrument. This expansion provides additional protection to creditors and investors, enabling them to seek recourse through the court in a "discrete and rapid manner", thereby preventing debtors from dissipating their assets. If any of the conditions for making an order are not met, the creditor must file a lawsuit in the ordinary way. The requirement that the debt be for a specified amount includes an amount documented in invoices that are not disputed by the debtor, so that, in practical terms, if the creditor possesses invoices that have been acknowledged by the debtor, serves the debtor with a payment notice allowing 5 days to pay the debt, and the debtor fails to make payment, the creditor may request the court to issue a payment order. The court is expected to issue the order within 3 days, as provided under Article 144 of the UAE CPL.

[10] The first step in the process is thus the service of a legal notice by the creditor on the debtor, duly notarised by a Dubai Court Public Notary, allowing 5 calendar days for payment. The notice is in Arabic, but may be translated also into English if Arabic is not the recipient's first language. Service is effected by Tableegh, a company which has a contract with the Dubai Court for service of all types of court documents and orders. In terms of Article 9 of the UAE CPL, service may be effected by a variety of means, including by email. If the recipient chooses not to read the email, that is a matter for it; service would nonetheless have been validly effected. If, following service of the notice, the debt is not paid by the recipient within 5 days, the creditor may apply for a payment order. That application is short, and is written in Arabic; it is not translated, nor is it served on the debtor. It must be accompanied by an exhibit of documents including the legal notice, any available contract, invoices and the acknowledgment of debt. It is triaged by the court case management office and, if in order, it is passed to a judge to examine the merits of the

application (Article 45 (9) UAE CPL). The court's order must be issued within 3 working days after the submission of the application (Article 144 (4) UAE CPL). Thereafter, the debtor is notified of the court's order through the methods permitted under the UAE CPL. There is no absolute requirement for advertisement in a newspaper but the judge may order that, without specifying which newspaper.

[11] Mr Al Zarooni confirmed that the notice itself does not commence court proceedings. If a debtor wishes to challenge the content of a notice, there is no means of notifying the court that the debt is challenged or disputed. The sole recourse is to respond to the creditor serving the notice (or their lawyer) stating that the debt is disputed. That may deter the creditor from utilising the payment order procedure, but does not, in itself, prevent them from making an application to the court for a payment order, if the paperwork appears to demonstrate that the debt is undisputed.

[12] The sole means of challenge through the court is in terms of Article 147 of the UAE CP, whereby it is possible for a debtor against whom a payment order has been made to file a grievance (within 15 days) or an appeal (within 30 days). In considering the appeal, the judge does not adjudicate on the merits of the dispute, but, rather, considers whether the payment order procedure was properly used. If, for example, the judge was satisfied that there was a *bona fide* dispute in relation to the debt, the payment order would be recalled in which case the creditor would require to pursue the claim by more traditional means.

The circumstances giving rise to the claim

[13] The following facts are not contentious, and emerged from the evidence of Mr Hogarty and Mr Abdulle. (Mr Asanov's evidence did not add a great deal to the matters in issue.) Mr Abdulle said that Erhan Tetik was employed as the sales director and deputy

CEO of Monitox from April 2023. Mr Samuray told everyone to follow Mr Tetik's instructions. Mr Abdulle signed the services contract on behalf of Monitox on 22 May 2023, albeit, as requested by Mr Tetik, he dated it 4 January 2023. The version he had signed did not include charging information in schedule 2. He was sent a copy of the agreement with that information included on 29 May 2023. Papel provided some of the services they were meant to provide but the work had not been completed.

[14] As regards Papel's decision to terminate the services contract, Mr Hogarty said that Mr Samuray decided to do that on his advice when the separate dispute between Mr Samuray and Mr Asanov arose. It was agreed with Mr Abdulle that the services contract would be terminated with immediate effect, and Mr Hogarty drafted a termination notice on that basis. He also drafted a discharge, whereby Monitox agreed to discharge Papel of all obligations, warranties and liabilities under the agreement. He emailed the termination notice and discharge to Mr Abdulle, along with two invoices, on 3 July 2023. Mr Abdulle accepted that he had received them by email on that day. He said that he spoke to Mr Tetik about them on 5 July 2023. Mr Tetik said that Monitox should accept the notice of termination and the discharge, and so Mr Abdulle signed them on behalf of Monitox, and returned them to Mr Hogarty by email on 7 July 2023. Although Mr Abdulle, in his evidence, maintained that the invoices had not been due, because Papel had not provided all of the services it was supposed to provide, he accepted that in his email to Mr Hogarty of 7 July 2023 he had confirmed that the invoices were valid and would be paid in due course. He said that he passed the invoices to Mr Tetik, whose decision it was as to whether the invoices should be paid (notwithstanding what Mr Abdulle had told Mr Hogarty). Monitox was still a start-up at that time and it had no money. It was dependent upon Mr Samuray

providing Monitox with funds to enable invoices to be paid. Perhaps not surprisingly in view of that last evidence, the invoices were not in fact paid.

The court proceedings

[15] In that state of affairs, on 7 September 2023 a legal notice under Article 9 of the UAE CPL was, on Mr Hogarty's instructions, served on the defender by a Dubai law firm, Hamdan Al Shamsi, through the court process servers, Tableegh. Service was effected by email to Mr Abdulle, written in Arabic, although it included a number readily recognisable as a phone number in the event of queries. Within the body of the email was a link to a pdf version of the notice, which was in two columns, the left hand column being in English and the right hand one in Arabic. It required payment of the invoiced amounts within five days and stated that: "Failure to comply with this notice will compel the [pursuer] to initiate legal measures to obligate [the defender] to settle the outstanding debt", without stating what those measures would be, or when or where they would be taken.

[16] Mr Al Zarooni confirmed that service (and indeed the entire procedure) was regular and in accordance with UAE law. On the topic of service, Mr Abdulle's evidence was unsatisfactory. In his witness statement, he said that he had recently (for the purpose of preparing his statement) checked his email and could see that he had received the email of 7 September 2023, from courtnotifications@tableegh.ae. The link in the email said "Tableegh" but he did not know what that meant. The email received was in Arabic. Although he could read and write a bit of Arabic (Mr Abdulle is Dutch), he did not know what this email from Tableegh meant and so he did not take any action. He did not open the "attachment" (*sic*) but he did open it on 21 January 2025. He did not dispute that the document which he then opened was the notice founded on by the pursuer in its application

for a payment order. However, in his oral testimony, despite being challenged on the matter several times, he maintained that he had not even opened the email at the time it was received and had only opened it for the first time in January 2025. He sought to explain that by saying that he did not know who Tableegh were, and (in effect) that he thought the email was junk.

[17] Ultimately, it makes no difference which version of Mr Abdulle's evidence (if either) is correct because in neither version did Mr Abdulle read the notice, but (on the evidence of Mr Al Zarooni) that does not affect the validity of the service (nor would failure to read a properly served writ invalidate service in Scots law). However, for what it is worth, I do not accept Mr Abdulle's oral testimony that he did not open the email in September 2023. In the first place, that is not what he said in his witness statement. Second, he could not have known the email was in Arabic unless he had opened the email. Third, it is unclear how he knew that the email was from Tableegh unless he had opened it (although I accept that that name does appear in the email address). Fourth, I do find it entirely credible that one might not click on a link in an email if one does not know who the email is from; less credible that one would not open an email which bore to be from "courtnotifications". For all these reasons I find that Mr Abdulle did open the email but did not open the link and so did not read the notice. Had he read the notice, I think it likely that he would have done what he eventually did (on receipt of the later notices) which was to forward the notice to Mr Asanov for his attention.

[18] Be all that as it may, the debt, unsurprisingly, remained unpaid and on 27 September 2023, the pursuer's lawyers registered the cause in the Dubai Courts, and judgment was issued on 30 September 2023, finding Monitox liable to pay the sums of US$130,725

and £26,874.89 along with interest at a rate of 5% from 7 July 2023 until payment, in addition to fees and expenses and attorney fees of AED 1,000.

[19] On 5 and 13 October 2023 Mr Abdulle was emailed notices of the judgments. At this stage, I need to say more about these notices. Although Mr Abdulle referred to them in his witness statement in general terms, and although Mr Al Zarooni had apparently seen them in the course of preparing his report, the defender did not lodge them in process. The pursuer's legal representatives woke up to that fact shortly before the proof (having previously laboured under the misapprehension that another document was the notice) and on the morning of the proof senior counsel for the pursuer moved to lodge the notices, along with a newspaper advertisement which had been published on 9 October 2023 (all with English translations), telling me that the pursuer had only recently come into possession of them. The significance of these documents was said to be that they stated the defender's right of appeal. That motion was opposed by counsel for the defender, under reference to RCS 47.14 – which, reading short, required all productions in the present case to be lodged by the timetable date of 4 February 2025, unless the court was satisfied that any document sought to be lodged thereafter could not with reasonable diligence have been lodged on time; in counsel's submission, the documents could with reasonable diligence, have been lodged timeously. I nonetheless allowed the documents to be lodged, considering that, in all the circumstances, the test in RCS 47.14 was met. Counsel for the defender then objected to any evidence about the notices, and the newspaper advertisement, on the basis that there was no record for any such evidence, and the defender had no fair notice of this line. I allowed evidence about the notices to be led under reservation of its relevancy and competency.

[20] I now repel the objection. The defender having made a positive assertion in its defences that the defender did not receive any notice indicating whether it could appeal the judgment, the pursuer is entitled to lead evidence to rebut that assertion without making an express averment to that effect in its pleadings. There is no prejudice occasioned to the defender, given that it was in possession of the notices, and Mr Abdulle referred in his evidence to service of them. It is plainly appropriate that the court should have regard to them in reaching a view as to whether natural justice has been breached.

[21] Reverting to the emailed notices, then, Mr Al Zarooni was initially at a loss to explain why what initially appeared to be the same notice was emailed twice, until he noticed while giving evidence that the second one had a partial English translation, which the first one did not, from which he inferred that the court had required that the second one be served, which appears a plausible explanation. Mr Abdulle did open these emails. As just observed, the notice in the first email was written exclusively in Arabic. Mr Abdulle said that he had put the first paragraph into Google Translate, which provided a very poor translation and he was able to understand only that it referred to a sum or sums of money. Because the translation was so poor, he did not attempt to translate the remainder of the notice. Mr Al Zarooni said that the notice included a sentence (in Arabic) that the defender had the right to file a grievance or appeal in accordance with Article 147 of the CPL.

[22] The second notice was written mainly in Arabic, but, in the middle of the Arabic text, it contained the following in English:

> "Court has orderded (*sic*) in commercial material Obliging the defendants to pay an amount 3650000 dirhams (Three million six hundred and fifty thousand dirhams) and legal interest at 5% from the Date of the lawsuit in until full payment, with fees and expenses 21-09-23" (all *sic*).

As counsel for the pursuer conceded (although he maintained it was immaterial) that was wrong, in that the total sum awarded by the court, expressed in Dirhams, was considerably less than the sum stated in that translation. It should also be noted that there was no English translation of that part of the notice which informed the defender of its right to file a grievance or appeal. On receipt of this notice, Mr Abdulle again translated the first paragraph using Google Translate, with the same result as previously, and then forwarded the notice to Mr Asanov, his assumption being that the court order must relate to the separate dispute between Mr Asanov and Mr Samurai. It did not occur to him that it might relate to the unpaid invoices from July 2023. He did not specify, nor was he asked, on what date he had sent the notices to Mr Asanov. Mr Asanov's evidence was that he had not received them at all but, even if he did, he took no action on them.

[23] As for the advertisement, it was published in the Al Jafir newspaper on 9 October 2023, in Arabic only. Mr Al Zarooni said that there were newspapers published in English in the UAE, Al Jafir not being one of them. He did not know whether the judge in the present case had ordered publication. The judge would not normally specify which newspaper an advertisement should appear in.

[24] For completeness, I should mention that in 2024, the defender filed a claim with the Dubai Centre for Amicable Dispute Resolution for the appointment of a technical expert with a view to a counterclaim against the pursuer challenging the validity of the Services Agreement. I do not propose to discuss that procedure in any detail since it has no bearing on the validity of the payment order or the issue which I must decide. The opinion of the expert is a recommendation only and is not binding on parties, or the court. In the event, the Centre recommended that the dispute referred by the defender be terminated.

Submissions

Pursuer

[25] Counsel for the pursuer sought to draw an analogy between the procedure adopted by the pursuer in Dubai, and the Scottish procedures of summary diligence proceeding upon deeds registered for execution in the Books of Council and Session in which the debt owed by the debtor was readily ascertainable, and summary warrants available to certain public authorities. The payment order in Dubai was simply an analogous *ex parte* procedure available where, as here, the debt was admitted, with the added protection that it was sanctioned by a judge. The procedure offered several opportunities for a debtor to deny the debt and to request a full hearing, but the defender had failed to avail itself of those opportunities. Each complaint offered by the defender as to the unfairness of the proceedings was answered by Scots authority to the effect that the Dubai procedure was not unfair. First, in the regulatory sphere, there were authorities vouching the proposition that even if a defendant did not read the service notice, that did not render service ineffective: *R (Raheen)* v *Nursing and Midwifery Council* [2010] EWHC 2549 (Admin), in which the court made clear that compliance with the rules for service was the key consideration rather than whether notice of the proceedings was in fact read. The Inner House had recently examined the question of effective service in *Glasgow City Council, Applicant* 2025 SLT 112, saying at para [57], that it was important to discern the purpose of any statutory requirement to effect service in a particular way. In the present case, the purpose had been met, through service of an email containing a translated court process. The service rules in Dubai had been complied with in that the notice had been sent by Tableegh. Second, the Scottish courts expected a defender to do all that it reasonably could in order to enter process or appeal, the authority for that, again in the regulatory sphere, being *Neilly* v *Nursing and Midwifery*

Council 2019 SC 565; whereas the defender had time and again failed to respond to the pursuer's legitimate demands for payment. Third, one plank of the defender's argument that natural justice had been breached appeared to relate to the lack of information about the existence of a right to appeal; but as a matter of fact, it had received notice of its right of appeal in the Al Fajr newspaper advertisement and the judgment notices served on Mr Abdulle on 5 and 13 October 20223. Fourth, the defender complained that Mr Abdulle did not understand Arabic to a level that would enable him to understand the emails that he was sent, which was in effect a plea that he was ignorant of the law. However, ignorance of a legal requirement was no excuse where a person made no enquiries: *Yaqoobi* v *The Commissioners for His Majesty's Revenue and Customs* [2024] UKFTT 1160 (TC). Overall, the defender had ample notice that proceedings would be raised against it for the admitted debt; ample notice that judgment had been pronounced; and it was told three times that an appeal was possible. It did nothing in response to any of these notifications. It had not done all it reasonably could to resist or appeal the order granted in Dubai, and there had been no breach of natural justice. It could not complain that documents had been served on it in Arabic when it had submitted to the jurisdiction of the Dubai courts and had agreed that the contract would be governed by UAE law. Finally, the court should be slow, as a matter of public policy, to find that the UAE legal system was contrary to natural justice, which could deter Dubai enterprises from contracting with Scottish businesses: or, as was said in *Anton*, Private International Law (3rd Edition) at 9.08: "Unless account is taken of the laws of foreign countries we risk defeating the legitimate expectations of parties who regulated their affairs with reference to those laws".

Defender

[26] I find it unnecessary to set out the submissions for the defender, or the authorities referred to, at length, in that they are largely reflected in my decision, below. In short, counsel for the defender did not shrink from arguing that the entire procedure for obtaining a payment order was contrary to natural justice, but his subsidiary position was that there had been a breach of natural justice in the present case. The cornerstone of his submission was that it was a fundamental requirement of natural justice that sufficient notice of proceedings must be given before judgment is pronounced, and that simply had not happened in the present case.

Decision

[27] With reference to the final submission made on behalf of the petitioner, it is important to make clear at the outset that this opinion is not a general critique of the fairness of the payment order regime in the UAE Civil Code, or whether those provisions are contrary to natural justice. Rather, the question which I have to address is whether, in the particular circumstances of this case, the manner in which this particular payment order was obtained against the defender, such that it is now unchallengeable, has resulted in a breach of natural justice on this particular occasion. Senior counsel for the pursuer suggested that since the procedure was, so to speak, played by the book, I would have to find either that the system as a whole was contrary to our principles of natural justice, or that it was not, and that no middle ground was available. However, there are specialities which arise in this case out of the particular manner in which the defender was notified of the judgment; and anyway I do not accept that, after the point at which the order was obtained, the procedure was necessarily played by the book, for reasons I will come on to discuss.

[28] While commenting on the pursuer's submissions, I should also observe that it is factually not the case that the defender had several opportunities to deny the debt and request a full hearing. The notice of 7 July 2023, as previously pointed out, did not commence the legal process, and did not afford the defender any opportunity to present its case to the court. Further, while it may be true that the defender had more than one opportunity to deny the debt (to the pursuer), its failure to do so prior to the payment order procedure has no bearing on whether the subsequent procedure contravened natural justice or not.

[29] The starting point is to note that the Scottish courts will not recognise or enforce a foreign judgment obtained in breach of the principles of natural justice recognised in Scotland: *Rudd* v *Rudd* [1924] P 72; *Crabtree* v *Crabtree* 1929 SLT 675; *Scott* v *Scott* 1937 SLT 632. As Lord Russell said in *Scott:*

> "According to the law of Scotland a foreign judgment may be deemed invalid, when founded on in a Scottish Court, on account of the proceedings in which the judgment was obtained being opposed to natural justice; and that ground is held as established not only where, as here, the foreign Court had not competent jurisdiction, but also where there has been, as here, ignorance of the dependence of the suit and a want of notice to the party affected by the foreign judgment (see Dicey, Conflict of Laws, section 107)."

[30] The principles of natural justice in this context were explained by Atkin LJ in *Jacobson* v *Frachon* (1927) 138 LT 386, at 392:

> "Those principles seem to me to involve this, first of all that the court being a court of competent jurisdiction, has given notice to the litigant that they are about to proceed to determine the rights between him and the other litigant; the other is that having given him that notice, it does afford him an opportunity of substantially presenting his case before the court."

As can be seen, there are two elements involved in that: first, that the litigant be given notice that the court is about to determine his rights; and, second, that the litigant has the opportunity of substantially presenting his case to the court: there would be little point in

giving notice to the litigant that a court was about to determine his rights, if he did not also know where and when that was to occur, or had insufficient time to present his defence.

[31] These principles were recently restated by the Supreme Court in *Cameron* v *Liverpool Victoria Insurance Co Ltd* [2019] UKSC 6 [2019] 1WLR 1471, Lord Sumption stating at para [17]:

> "Justice in legal proceedings must be available to both sides. It is a fundamental principle of justice that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard. The principle is perhaps self-evident. The clearest statements are to be found in the case law about the enforcement of foreign judgments at common law. The English courts will not enforce or recognise a foreign judgment, even if it has been given by a court of competent jurisdiction, if the judgment debtor had no sufficient notice of the proceedings. The reason is that such a judgment will have been obtained in breach of the rules of natural justice *according to English notions*."

[32] Still more recently, in another case where enforcement at common law was sought of a judgment emanating from the UAE, *Cancrie Investments Ltd* v *Haider* [2024] EWHC 1876 (Comm), Mr Nigel Cooper KC sitting as a High Court Judge, restated the principles of natural justice as including the fundamental ones that notice be given to a litigant, and that he be afforded an opportunity of substantially presenting his case to the court.

[33] The foregoing principles are all reflected in domestic and European legislation making provision for the recognition and enforcement of foreign judgments, such as the Administration of Justice Act 1920 section 9(2)(c), the Foreign Judgments (Reciprocal Enforcement) Act 1933 section 4(1)(a)(iii) and Regulation (EU) No 1215/2012 (Brussels I (recast)) Article 45(1)(b). The first of these requires that the judgment debtor be duly served with the process of the original court, while the latter two both contain the requirement that the debtor be served in sufficient time to appear and to present his defence.

[34] In this last context, it has been said that whether sufficient notice has been given is a question of function rather than form: in particular, was the debtor given a proper

opportunity to contest the proceedings before judgment was pronounced and in a manner that enabled the debtor to present his defence? All relevant circumstances must be taken into account, including the means employed for effecting service and the nature of the steps which required to be taken in order to prevent judgment from being pronounced. The debtor's state of knowledge and whether any document served on the debtor had been translated into an appropriate language before service are relevant factors: *British Seafood Ltd* v *Kruk* [2008] EWHC 1528 (QB) at para [22] to [29]. It is noteworthy that in that case a payment order had been granted in Poland against British Seafood Ltd (BSL) which in terms of Polish law could be validated as a final judgment if objections were not filed within 14 days. A certified copy of that order was served on BSL which they had chosen to ignore, with the result that the order was duly validated and the ensuing final judgment was registered in England. BSL's subsequent application to set the order aside was refused, the judge holding that it had had sufficient time to arrange for its defence.

[35] As just observed, sufficient notice may require that any notice is accompanied by an appropriate translation of all relevant text. In Scotland, that is reflected in the Rules of the Court of Session, rule 16.6. In an international context, Article 5 of the Hague Service Convention 1965 (Convention on service abroad of judicial and extrajudicial documents in civil or commercial matters) provides for translation into the official language of the State in which the document is to be served; and Article 12 of Regulation (EU) 2020/1784 entitles an addressee to refuse to accept a document to be served if not written in, or accompanied by a translation into, either a language which the addressee understands or an official language in the state concerned. No authority was cited supporting the pursuer's argument that because the defender submitted to the jurisdiction of the Dubai courts, it had somehow

foregone any right to receive intimation of court proceedings in a language which it could understand.

[36] Finally, by virtue of section 6(1) of the Human Rights Act 1998, this court must also have regard to the fair trial standards enshrined in Article 6(1) of ECHR: see *Pellegrini* v *Italy* (2002) 35 EHRR 2 at para [40]. In that case, the Italian courts had declared as enforceable a judgment of the courts of the Vatican, annulling the applicant's marriage, in circumstances where the applicant had been given no notice of the grounds on which the application to annul her marriage had been made, had no access to the court file and had no opportunity to lead evidence or put her case. The European Court of Human Rights stated at para [44] that:

> "...the right to adversarial proceedings, which is one of the elements of a fair hearing within the meaning of article 6.1, means that each party to a trial, be it criminal or civil, must in principle have the opportunity to have knowledge of and comment on all evidence adduced or observations filed with a view to influencing the court's decision."

[37] The European Court of Human Rights has also made plain that the right of access to a court includes a right to be informed of the procedures to be followed in order to appeal against a judgment, including any relevant formalities and time limits, particularly in a case where a person has been convicted, or judgment has been granted, *in absentia: Faniel* v *Belgium* No 11892/08 at para [30]; *Assuncao Chaves* v *Portugal* No 61226/08 at para [79]-[81].

[38] Drawing all of this together, I conclude that natural justice will be breached where a debtor has not been given sufficient notice of foreign proceedings in such a way as to have an opportunity to present his case to the court at some stage in the process. Whether sufficient notice has been given is a fact-sensitive question, depending on the timing of any notice which was given, whether notice was given in a language which the recipient could

understand and, at least in some cases, whether adequate notice was given of the right to appeal or challenge any judgment and the mechanism or time limits for doing so.

[39] Applying that to the facts of the present case, the first point to note is that virtually all of the authorities (*British Seafood Ltd* v *Kruk* being an exception) deal with a situation where service was a requirement of the foreign jurisdiction which led to a judgment but for one reason or another the proceedings were not as a matter of fact brought to the notice of the other party; whereas in the present case, of course, the foreign proceedings themselves did not require to be served on the debtor. It does not follow, as senior counsel for the pursuer argued, that the authorities as to what constitutes sufficient service, where service is required, can simply be ignored; but the question does have to be asked whether the procedure, as it was utilised in this case, offended against Scottish principles of natural justice.

[40] In my view, it would be going too far to say that the payment order procedure permitted by UAE law is necessarily contrary to natural justice, insofar as it operates within strictly defined parameters in relation to debts which are not disputed, but that is subject to one important caveat borne out by the principles discussed above, which is that the debtor must, at some stage in the procedure, have an opportunity to challenge, or seek to set aside, the order; in particular, an opportunity to dispute the creditor's assertion that the debt is undisputed (as was the case, for example, in *British Seafood Ltd*). Were it not so, then the judgment would undoubtedly offend against Scottish principles of natural justice, since it would have been obtained in circumstances where the debtor had no opportunity whatsoever to present its case.

[41] The pursuer laid great store on the fact that Scots law has a system of summary diligence, and that summary warrant procedure exists albeit in limited circumstances,

illustrating that it is not possible to say that natural justice requires that in every case, a debtor must be given notice before an application for an enforceable court order for payment (or its equivalent) is issued against him. However, care must be taken that any analogy which is drawn between those procedures and the payment order procedure utilised in the present case is not taken too far. The juridical basis for summary diligence is that the debtor's consent, in the deed in question, to registration for execution in the Books of Council and Session is a "consent given *ab ante* that the Court of Session may issue a decree which is to have the same effect as if the parties had entered into a suit before the Court, and decree had been pronounced in that action": *Wilson*, The Scottish Law of Debt (second edition), page 217 – in other words, the underlying theory is that the debtor has consented to a decree of the court being issued, which is different in character from either acknowledging that a debt is due, or failing to respond to a notice demanding payment of the debt under pain of undefined court proceedings in the event that the debt is not paid. As regards summary warrants, they are available only in respect of a limited category of debts, generally taxes of one sort of another; again, that is some distance removed from a debt said to be due on a series of invoices. In either case, although there is no right of appeal, the debtor does have the right to apply to the court to suspend any charge served upon the deed or warrant as the case may be. It seems to me that these Scottish procedures should be regarded as special cases, rather than taken as authority for any broader proposition that *any* procedure which does not require intimation to be given to the debtor where a debt is undisputed, does not offend against principles of natural justice.

[42] However, as I have said above, there is nothing inherently objectionable in an abbreviated procedure for obtaining judgment in a case where a debt is undisputed, provided that the debtor is thereafter given notice of the judgment and has an effective

opportunity at that stage to challenge it. That is the basis upon which the payment order procedure operates, with the debtor being informed, whether by notice or advertisement, or both, of the right to appeal the order; and, as we have seen, in the present case, notices were served on the defender and an advertisement placed in the Al Jafir newspaper.

[43] Accordingly, up to the point to which the court granted the order on 30 September 2023, I do not find that there was any contravention of natural justice. The defender had, after all, submitted to the jurisdiction of the Dubai courts and had agreed that its contract would be governed by UAE law. It is what happened thereafter that gives rise to greater difficulty.

[44] Dealing first with the newspaper advertisement, had that been the only means of notifying the pursuer of the payment order, I would have found that an advertisement in Arabic in an Arabic newspaper circulating in the UAE was wholly insufficient to catch the attention of a Scottish registered company which traded in London. The comment Mr Hogarty volunteered in his evidence that the newspaper was available online worldwide was somewhat facile in this regard, the chances of anyone within the defender reading and understanding the advertisement being vanishingly small. However, since the notices of 5 and 13 October 2023 were as a matter of fact received by the defender, the adequacy or otherwise of the newspaper advertisement is neither here nor there. The nub of the case is whether those notices gave the defender sufficient notice of the payment order such that it had an effective opportunity to challenge it by grievance or appeal. Senior counsel for the pursuer, under reference to *Neilly* v *Nursing and Midwifery Council*, above, made much of the court's expectations of a party to do all that it reasonably can in order to appeal; although in *Pomiechowski* v *Poland* [2012] UKSC 20, the Supreme Court had held that section 3(1) of the Human Rights Act 1998 required that the courts should have a discretion in exceptional

cases to extend the time for lodging an appeal, that was not a broad or unfettered right. Counsel also emphasised that it is not the practice in Scotland for the defender to be notified in a judgment, or decree in absence of any right of appeal. The onus is on a party to familiarise themselves with the rules of procedure.

[45] Dealing with that last point first, I do not consider that it is a helpful comparison, given that in Scotland, the defender will already have been served with a summons or other initiating writ, giving a defined and certain period whereby appearance must be entered; whereas under the payment order procedure, the debtor has had no prior notification of the application to the court and the notice is his first – indeed, only – opportunity to enter the process. As regards *Neilly*, it is not in point, the issue there being whether the court's dispensing power should be exercised to allow the appellant to appeal late against a decision of which she was aware.

[46] In the present case, the first notice given to the defender of the payment order judgment was the notice of 5 October 2023. The view was then plainly taken that it was insufficient to bring the judgment to the defender's attention because it was written entirely in Arabic, leading to the notice of 13 October 2023 which was partly (but only to a limited extent) in English. As a means of bringing the judgment and consequent right to appeal to the notice of the defender, a Scottish company trading in London, the notice of 13 October 2023 (and, *a fortiori*, that of 5 October 2023) was in my view inadequate. The judgment was not identified. The amount for which judgment had been granted was wrongly stated. Most significantly, there was no mention, in English, of the right to appeal. Even had that been in English, the notice given was arguably insufficient, since the defender was not informed of the date by which any appeal should be lodged, nor of the court to which the appeal should be made. It is no answer for the pursuer to say that Mr Abdulle could have

taken more steps to translate the notices or to seek legal advice. Doubtless he could have done so, but the fact that he did not does not cure the insufficient steps taken to bring the defender's attention to the judgment in the first place.

[47] Stepping back, and taking a broad overview of what happened, the defender was given no notice of the pursuer's application to the Dubai court. Contrary to the basis upon which the pursuer's written submission proceeded, the notice of 7 September 2023 did not commence court proceedings, nor did it give the defender any effective opportunity to challenge any proceedings which might thereafter be raised. The fact that it was written in English therefore was of no assistance to the defender. Of the three post-judgment notices relied on by the pursuer, the first, being the notice of 5 October 2023, was wholly in Arabic and recognised even by the court to be insufficient to bring the notice to the attention of a Scottish company with no known Arabic speakers. The second, a newspaper advertisement, was wholly in Arabic and published in a newspaper which had no realistic prospect of coming to the attention of the defender. The third, the notice of 13 October 2023 was only partly in English and while it drew the defender's attention to the fact that a judgment of some sort had been passed, the amount stated was wrong, the parties were not identified and, crucially, there was no translation of the intimation of the right to appeal, or how, or by when, that must be exercised.

[48] For all these reasons, I conclude that the defender was not, in this case, given any real opportunity to present its case and that, consequently, there was a breach of natural justice. The pursuer is therefore not entitled to the orders it seeks.

Disposal

[49] I have sustained the defender's third plea-in-law, repelled the pursuer's pleas-in-law and granted decree of absolvitor. As requested, I have reserved all questions of expenses.