

Enforcing Foreign Judgments in Ontario: *Hilmer Motorsport GmbH v. Mason*

The Ontario Court of Appeal's decision in *Hilmer Motorsport GmbH v. Mason* (2025 ONCA 875) is a useful reminder of how narrowly courts in Ontario approach defences to the enforcement of foreign judgments. In particular, the case confirms that an arbitration clause will not, on its own, prevent enforcement where a defendant chose not to raise that issue in the foreign proceeding.

Background

The dispute arose out of a driver agreement between Hilmer Motorsport GmbH, a German motorsports company, and Nelson Mason, an Ontario-based professional race car driver. The agreement was governed by German law, identified Munich as the forum, and contained an arbitration clause. Nelson's father, Jay Mason, guaranteed Nelson's obligations under a separate guarantee governed by German law but without an arbitration clause.

Hilmer commenced proceedings in Munich for breach of contract and unpaid amounts. Both defendants were properly served but did not defend the German action. Hilmer obtained a default judgment for approximately €409,000, plus interest and costs.

Hilmer then commenced an action for recognition and enforcement of the German judgment in Ontario and brought a motion for summary judgment.

The Ontario Superior Court of Justice granted summary judgment enforcing the German judgment. The Masons appealed, with their main arguments being that the German court did not have jurisdiction over the dispute and that the existence of the arbitration clause meant that the German court granting judgment was contrary to public policy.

The Ontario Court of Appeal's Decision

The Ontario Court of Appeal dismissed the appeal and upheld enforcement.

The Court of Appeal held that the motion judge did not err in finding that the German court had jurisdiction over the dispute. The contracts were governed by German law, the money was to be paid to a German entity, and Munich was expressly identified as the place of jurisdiction. This easily satisfied the "real and substantial connection" test applicable to the enforcement of foreign judgments in Canada.

Crucially, the Court of Appeal rejected the argument that the arbitration clause deprived the German court of jurisdiction. An arbitration clause is not self-executing. A party seeking to rely on an arbitration clause must take active steps to invoke it in the forum where proceedings are commenced, typically by seeking a stay. The Masons did not do so. Their decision not to participate in the German proceedings meant that the German court was free to proceed to judgment.

The Court of Appeal also found no breach of natural justice. The defendants had notice of the German proceedings and an opportunity to be heard. Their failure to engage was a strategic choice,

not a procedural deficiency. Ontario courts will not refuse enforcement simply because a defendant elected not to defend the foreign action.

Finally, the Court of Appeal rejected the public policy argument. Enforcement of a foreign judgment will only be refused where it would be contrary to fundamental notions of justice or morality. The existence of an arbitration clause, without more, does not meet that threshold.

Takeaways

This decision reinforces several practical points for parties involved in cross-border disputes:

- Defences to enforcement of foreign judgments in Ontario remain narrow and are applied strictly.
- Arbitration clauses must be actively relied upon in the foreign proceeding; ignoring the action and relying on the arbitration clause later is a high-risk strategy.
- Ontario courts will focus on jurisdiction, notice, and procedural fairness, not on relitigating contractual arguments that could have been raised abroad.

Hilmer Motorsport underscores the importance of early strategic decisions in international disputes. Parties served with foreign proceedings must engage with the process and assert their rights in the foreign forum. Failure to do so may result in a judgment that Ontario courts will readily enforce.

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