IN THE SUPREME COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

SAMSUNG HEAVY INDUSTRIES CO., LTD., a Korean corporation,

Plaintiff-Appellant,

vs.

FOCUS INVESTMENTS, LTD., a Marshall Islands corporation, and MEHMET EMIN KARAMEHMET,

Defendants-Appellees.

Supreme Court No. 2018-02

OPINION

BEFORE: CADRA, Chief Justice; SEABRIGHT,* and SEEBORG,** Acting Associate Justices

CADRA, C.J., with whom SEABRIGHT, A.J. and SEEBORG, A.J. concur:

I. INTRODUCTION

Plaintiff-Appellant Samsung Heavy Industries Co. Ltd. (Samsung) appeals an Order of the High Court dismissing its complaint to recognize and enforce a foreign judgment obtained in England against Defendant-Appellee Mehmet Emin Karamehmet (Karamehmet), a Turkish citizen/resident. Samsung's complaint also sought to execute its judgment on Karamehmet's alleged ownership of shares in

* The Honorable J. Michael Seabright, Chief United States District Court Judge, District of Hawaii, sitting by designation of the Cabinet.

** The Honorable Richard Seeborg, United States District Court Judge, Northern District of California, sitting by designation of the Cabinet.

Focus Investments, Ltd. (Focus), a non-resident Marshall Islands domestic corporation.

In dismissing Samsung's complaint, the High Court found that it lacked personal jurisdiction over Karamehmet and that property belonging to Karamehmet (namely his indirect beneficial ownership of corporate stock or shares in Focus) was not shown to be present in the Marshall Islands.

Samsung presents two questions on appeal: (1) whether the High Court erred by dismissing this action to enforce a foreign judgment based on the conclusion that ownership of shares in a Marshall Islands corporation does not constitute ownership of property in the Marshall Islands; and (2) whether the High Court erred by purporting to incorporate Section 8-112 of the Uniform Commercial Code into the common law of the Republic.

For the reasons set forth herein, we AFFIRM the High Court's dismissal order.

II. BACKGROUND, FACTS & PROCEDURAL HISTORY

Samsung, a Korean corporation, obtained a judgment against Karamehmet, a Turkish citizen and/or resident, for approximately $44.3 million in an English court (the "English judgment"). That judgment, obtained by default, arose out of an action for breach of shipbuilding contracts between Samsung and

several companies owned by Karamehmet. Karamehmet was a personal guarantor on those contracts. Karamehmet was served with the English judgment on June 17, 2016. Samsung alleges that Karamehmet and/or his companies have not paid any portion of the English judgment to date.

On April 19, 2017, Samsung filed its "Original Complaint to Enforce Foreign Judgment and for Injunctive Relief" along with a "Motion for Temporary Restraining Order and Preliminary Injunctive Relief" in the RMI High Court. Samsung sought recognition of the English judgment against Karamehmet pursuant to the Marshall Islands' version of the Uniform Enforcement of Foreign Money Judgments Act, 30 MIRC Ch. 4, and enforcement of that judgment against Karamehmet's alleged interest in shares of stock in Focus pursuant to the Marshall Islands' Enforcement of Judgments Act, 30 MIRC Ch. 1.

Samsung alleged the following facts in support of its claims: Samsung obtained an approximately $44.3 million judgment against Karamehmet in an English court by default; that judgment has not been satisfied; Karamehmet indirectly owns 100% of Focus, a non-resident Marshall Islands domestic corporation. Focus, in turn, holds 100% of Karamehmet's beneficial interest in Genel Energy, PLC, a Jersey corporation.

Based on Karamehmet's ownership of shares or stock in Focus, Samsung sought to execute its judgment against Karamehmet's shares in Focus reasoning: money judgments are liens against the personal property of the judgment debtor; Karamehmet's stock or shares in Focus are personal property; the situs of the stock or shares is in the Marshall Islands; and, therefore, the Focus stock is subject to execution in satisfaction of the English judgment.

On June 30, 2017, Karamehmet filed a motion to dismiss Samsung's complaint. Karamehmet argued that there was no personal jurisdiction over him as a matter of law because the complaint alleges no contacts, acts or presence of Karamehmet with the Marshall Islands sufficient to satisfy the requirements of the Republic's Judiciary Act, 27 MIRC § 201, *et seq.*; the complaint contained no alter ego allegations regarding Karamehmet's relationship with Focus; and the situs of Karamehmet's shares in Focus was not in the Marshall Islands. Karamehmet further argued that Delaware General Corporation Law (DGCL) § 169 should not be adopted by the court as urged by Samsung and that prior case law had rejected the proposition that the place of incorporation of a non-resident corporation is the legal situs of that company's stock, citing the High Court's decision in *Yandal Investments Pty Ltd. v. White Rivers Gold Ltd., et al.*, C.A. No. 2010-158. Karamehmet contended that, even if DGCL § 169, were to be incorporated into

Marshall Islands law, jurisdiction would still not exist because Delaware courts have rejected the notion that mere ownership of stock in a Delaware corporation permits the exercise of jurisdiction over the shareholder, citing *In re Dissolution of Arctic Ease,LLC*, 2016 WL 7174668 (stating that "[a] party's ownership of interests in a Delaware entity alone does not constitute sufficient minimum contacts for Delaware courts to exercise personal jurisdiction"), and other Delaware decisional authority. Finally, Karamehmet argued the case should be dismissed on *forum non conveniens* grounds.

On August 11, 2017, Samsung filed its opposition to the motion to dismiss arguing that in an action to enforce a foreign judgment under 30 MIRC Ch. 4, the presence of the judgment debtor's property is all that is necessary to provide a basis for jurisdiction, citing *Shaffer v. Heitner*, 433 U.S. 186 (1977), and post-*Shaffer* decisional authority including *Arbor Farms, LLC v. GeoStar Corp.*, 853 N.W.2d 421 (Mich. Ct. App. 2014) and *Lenchyshyn v. Pelko Elec. Inc.*, 723 N.Y.S.2d 285 (N.Y. App. Div. 2001). Samsung argued that the situs of corporate stock, in the absence of statute, is the place of incorporation. Samsung contended that under the Republic's Business Corporations Act (BCA), 52 MIRC § 15, the courts should harmonize its law with that of the State of Delaware. Samsung contends that DGCL § 169 codifies the common law rule that the situs of the

ownership of capital stock of all corporations existing under the laws of a state shall be regarded as that state for purposes of title, action, attachment, garnishment and jurisdiction. Finally, Samsung requested jurisdictional discovery and opposed dismissal on *forum non-conveniens* grounds.

Supplemental briefing on the motion to dismiss was subsequently filed by both parties.

On February 7, 2018, the High Court dismissed Samsung's complaint concluding that Samsung failed to demonstrate personal jurisdiction over Karamehmet or establish that his property can be found in the Republic. The High Court went through a thorough jurisdictional analysis finding it had neither general nor specific jurisdiction over Karamehmet sufficient to satisfy due process. More significantly to the instant appeal, the High Court held that Samsung failed to demonstrate that Karamehmet has property in the Marshall Islands. In arriving at this latter holding, the High Court reasoned that the Republic does not have an express statute establishing the legal situs of shares of domestic corporations; in the absence of statute the court must look to the common law *in effect* at the time of adoption of the RMI Constitution; that the common law rule that the situs of shares for purposes of attachment or execution is the domicile of the corporation was *not in effect* at the time the Constitution was adopted, rather, the law *in effect*

was statutory law; that in the absence of an express statute the court has the authority under the Enforcement of Judgments Act, 30 MIRC § 105, as well as its authority to advance the common law, by looking to how courts in the United States enforce judgments against shares in a domestic corporation. The High Court, accordingly, adopted Section 8-112 of the Uniform Commercial Code (UCC) as the Republic's common law governing the enforcement of judgments on shares of domestic corporations.

On February 22, 2018, Samsung timely filed a Notice of Appeal claiming the High Court erred in dismissing its complaint (1) by adopting Section 8-112 of the UCC as the common law of the Republic with regard to procedures that must be followed to execute judgment against shares in a Marshall Islands corporation; (2) by declining to apply U.S. common law with regard to the situs of shares in a corporation for purposes of executing judgment; (3) by finding Karamehmet owns no property located in the Republic; and (4) by dismissing the complaint for lack of jurisdiction.

The parties, by stipulation, requested expedited briefing and hearing of the instant appeal which was granted by a single judge order dated April 25, 2018. Oral argument before the Supreme Court was held on June 11, 2018.

III. STANDARD OF REVIEW

Dismissal of a complaint, where no factual matters have been determined, is reviewed *de novo*. *See, e.g. Rosenquist v. Economou*, 3 MILR 144, 151 (2011); *Jack v. Hisaiah*, 2 MILR 206, 209 (2002); *Lobo v. Jejo*, 1 MILR (Rev.) 224, 225 (1991) (stating that questions of law are reviewed de novo). A trial court's jurisdictional rulings and statutory interpretations are reviewed de novo. *Electrolines, Inc. v. Prudential Assurance Co.*, 677 N.W.2d 874, 880 (Mich. Ct. App. 2003).

IV. DISCUSSION

A. Mere Ownership of Shares in a Marshall Islands Non-Resident Corporation Does Not Constitute Ownership of Property in the Marshall Islands

1. The Marshall Islands' Statutory Scheme for the Recognition and Enforcement of Foreign Money Judgments

The Republic has adopted the "Uniform Foreign Money-Judgments Recognition Act" (UFMJRA), codified at Title 30 MIRC Ch. 4, §§ 401-409, and the "Enforcement of Judgments Act" (EJA), codified at Title 30, Ch. 1, § 101, *et seq*. The UFMJRA, 30 MIRC § 408, states "[t]his Chapter shall be so construed as to effectuate its general purpose to make uniform the law of those jurisdictions which enact it." We therefore look to decisional authority of other jurisdictions which have construed the UFMJRA and statutes similar to the Republic's EJA.

The UFMJRA and EJA are two separate statutes with different purposes. The UFMJRA deals with "recognition" of a foreign judgment. The EJA deals with "enforcement" of a judgment which includes a foreign judgment once recognized by the URFMJA. These statutes read together provide for a two-step process to gain ultimate enforcement of a foreign judgment. The first step in the enforcement process is the recognition or registration of the foreign judgment under the UFMJRA. The Act permits the raising of certain defenses to recognition, none of which was raised in the instant proceeding. Courts have been liberal in recognizing foreign judgments based on the principal of comity as announced in *Hilton v. Goyot*, 159 U.S. 113 (1895). After recognition of a foreign judgment, the judgment creditor can then execute against any property of the judgment debtor that the judgment creditor may find within the Republic under the EJA.

It has been recognized by commentators that the interplay between these two Acts may be confusing where, as here, recognition and enforcement of a foreign judgment is sought in the same action:

> [W]hen a judgment creditor seeks both recognition and enforcement of the foreign judgment, there is sometimes confusion over the interrelationship between the laws governing recognition of foreign judgments and those governing enforcement. . . . Confusion about the interaction of the 1962 Recognition Act and the Enforcement Act has resulted in conflicting decisions as to whether recognition and enforcement of a foreign

> judgment may be accomplished through a simple registration procedure under state law or whether there must first be a separate action brought seeking a decision recognizing the foreign judgment. Most courts require that a separate action be brought for the recognition of a foreign judgment. A successful action then becomes a local judgment that is both enforceable under local law and entitled to full faith and credit in other courts in the United States.

Ronald A. Brand, *Recognition and Enforcement of Foreign Judgments*, Federal Judicial Center International Litigation Guide, Apr. 2012, at 1-2.

A potential source of confusion created by seeking both recognition and enforcement in a single action may be that there are different jurisdictional or procedural requirements for a court to recognize a foreign judgment and for a court to ultimately enforce such a judgment by one of the procedures allowed by the EJA. It appears clear that in order to execute upon a foreign judgment there must be some property within the forum jurisdiction subject to attachment pursuant to the EJA. It is less clear whether it is a jurisdictional requirement for property to be within the forum, when personal jurisdiction is lacking, for the mere recognition of a judgment.

2. *In the absence of personal jurisdiction over the judgment debtor, the Court must have* **in rem** *or* **quasi in rem** *jurisdiction over the judgment debtor's property to enforce a foreign judgment*

Karamehmet argues that in order to enforce a judgment in a jurisdiction where there is no personal jurisdiction over the judgment debtor (as is conceded in

this case), one must bring an *in rem* or *quasi in rem* action against the property of the judgment debtor. Relying on *Pennoyer v. Neff*, 95 U.S. 714 (1877), Karamehmet contends that property must first be seized, attached, or otherwise in control of the court to maintain such jurisdiction. Samsung has not seized or attached Karamehmet's property (e.g. shares in Focus) so the High Court lacks *in rem* or *quasi in rem* jurisdiction and this case should therefore be dismissed.

While we agree that the court must have control of the property in order to enforce a judgment under the procedures allowed by the EJA, it does not follow that the court must necessarily have control by attachment, seizure, or otherwise, of a debtor's property to exercise *in rem* or *quasi in rem* jurisdiction *at the outset* of the action. Attachment, garnishment, seizure or use of some other procedural device to gain control over a foreign debtor's property would, however, be necessary to ultimately enforce a foreign judgment recognized under the UFMJRA.

Samsung cites us to 4A Wright, Miller, Steinman, *Federal Practice and Procedure* § 1070, at 465-66 , which observes:

> [A]ttachment or garnishment at the outset does not appear to be necessary in true-in-rem actions inasmuch as the Court in Pennoyer recognized that in a true-in-rem action acts equivalent to seizure are not a necessary prerequisite to the effective assertion of jurisdiction.
>
> There is considerable doubt, however, as to whether the requirement of attachment at the outset in quasi-in-rem actions is constitutionally based or exists only because jurisdictional statutes usually so provide or because it is

> administratively convenient and provides a degree of certainty that jurisdiction actually exists. Neither *Pennoyer* nor *Pennington* articulated the rule as a constitutionally mandated requirement. Commentators have pointed out that analytically it is the presence of the property within the jurisdiction and not its seizure that endows the court with jurisdiction over it.

Id. (emphasis added, footnotes omitted).

At the outset of a case, the court need not have attached or garnished the property at issue to assert *quasi in rem* jurisdiction. Rather, it is the presence of the property in the forum which gives rise to the court's jurisdiction. *Id.*; *but see* Silberman & Simowitz, *Recognition and Enforcement of Foreign Judgments and Awards: What Hath Daimler Wrought?*, 91 N.Y.U. L. Rev. 344, 353 ("Institution of an action [for recognition and enforcement of a foreign country judgment] traditionally *does* require personal jurisdiction or attachment of the debtor's property. . . . Maintaining a recognition and enforcement action in the United States has traditionally required personal jurisdiction over the debtor or the attachment of the debtor's property.").

Regardless of whether attachment is necessary for a court to attain *quasi-in-rem* jurisdiction at the outset of an action, it would seem axiomatic that in order to execute a recognized foreign judgment against property belonging to a judgment debtor the court must have gained control by attachment, seizure or other device allowed by the EJA over the debtor's property. Otherwise, as noted by Wright,

Miller, & Steinman, *supra*, the res may have vanished and the judgment creditor be left without a remedy.

The relevant inquiry in the instant case is not whether there is *quasi in rem* jurisdiction at the outset of this case but, rather, whether there is *quasi in rem* jurisdiction at all. The question is whether Karamahmet has property within the Marshall Islands which would support an assertion of *quasi in rem* jurisdiction at some point by attachment; i.e. whether the res (Karamahmet's stock in Focus) is present in the Marshall Islands.

3. In Order to Recognize and/or Enforce a Foreign Money Judgment the Court Must Have Either Personal Jurisdiction over the Judgment Debtor or Jurisdiction over the Judgment Debtor's Property

a. Shaffer v. Heitner *and the recognition/enforcement of foreign judgments*

Both Samsung and Karamehmet rely on the United States Supreme Court case of *Shaffer v. Heitner*, 433 U.S. 186 (1977) as supporting their respective positions.

In *Shaffer*, *supra*, the Supreme Court held that for purposes of initially adjudicating a claim on its merits, *quasi in rem* jurisdiction — that is, jurisdiction based solely on the presence of the defendant's property in the forum state — may be exercised only where "that property is . . . the subject matter of th[e] litigation,

[or] . . . the underlying cause of action [is] related to the property," 433 U.S. at 213, so as to conform to "the standard of fairness and substantial justice," *id.* at 206, established by *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). *International Shoe*, *supra*, held that for a defendant to be subject to jurisdiction in the forum, due process requires that "he have certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." The "minimum contacts" test is satisfied when "(1) the defendant has performed some act or consummated some transaction within the forum or otherwise purposefully availed himself of the privileges of conducting activities in the forum, (2) the claim arises out of or results from the defendant's forum-related activities, and (3) the exercise of jurisdiction is reasonable." *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1155 (9th Cir. 2006) (citing *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000). "If any of the three requirements is not satisfied, jurisdiction in the forum would deprive the defendant of due process of law." *Id.* (citation omitted).

In the case before us, Samsung concedes personal jurisdiction does not exist over Karamahmet. The question is whether Karamahmet has property in the Marshall Islands which would support an assertion of jurisdiction.

At the same time the Supreme Court announced the restriction of *quasi in rem* jurisdiction for purposes of hearing an original or plenary action, the Supreme Court stated in *Shaffer* that the presence of a judgment debtor's assets in the forum remained a jurisdictional basis for proceedings to enforce a previously rendered foreign judgment, even if the forum state and the defendant's property therein had no connection to the claim underlying the judgment:

> Once it has been determined by a court of competent jurisdiction that the defendant is a debtor of the plaintiff, there would seem to be no unfairness in allowing an action to realize on that debt in a State where the defendant has property, whether or not that State would have jurisdiction to determine the existence of the debt as an original matter.

433 U.S. at 210 n.36.

Shaffer's continuation of property-based jurisdiction to enforce a foreign judgment is supported by the consideration that a "wrongdoer 'should not be able to avoid payment of his obligations by the expedient of removing his assets to a place where he is not subject to an in personam suit." *Id.* at 210 (quoting the Restatement [Second] of Conflict of Laws, § 66, Comment a); *see also* Silberman & Simowitz, 91 N.Y.U. L. Rev. at 379 ("The Restatement observes that, without post-judgment asset jurisdiction, a debtor could easily render itself judgment-proof simply by removing its assets to a place where it [is] not subject to personal

jurisdiction"). In view of the need to foreclose avenues by which duly rendered judgments might be defeated, *Shaffer* recognized that it is not "unfair" to allow execution on a judgment in any state where the defendant's property is found — provided that the defendant was afforded notice and a fair opportunity to mount a defense upon the original adjudication of the original claim "by a court of competent jurisdiction." 433 U.S. at 210 n.36; *see also* Restatement (Third) of Foreign Relations Law § 481, cmt. h ("The rationale behind wider jurisdiction in enforcement of judgments is that once a judgment has been rendered in a forum having jurisdiction, the prevailing party is entitled to have it satisfied out of the judgment debtor's assets wherever they may be located."); *AlbaniaBEG Ambient Sh.p.k. v. Enel S.p.A.*, 160 A.D.3d 93 (2018 N.Y. Slip Op. 00928).

b. The law regarding recognition/enforcement of foreign judgments post Shaffer

Ronald A. Brand, *Recognition and Enforcement of Foreign Judgments*, Federal Judicial Center International Litigation Guide, Apr. 2012, at 10-11, succinctly summarizes the case law regarding jurisdiction to hear a recognition action post *Shaffer*:

> [C]ourts have split over the parameters of the due process requirements for jurisdiction in a recognition action. On one end of the spectrum are cases such as *Lenchyshyn v. Pelko Electric, Inc.*, [723 N.Y.S.2d 285 (2001)] . . . [which] allows a recognition action to be brought

> whether or not the defendant had contacts with the forum state or had assets within the state against which the judgment could be enforced. In *Lenchyshyn,* the New York court . . . state[d] that the judgment creditor "should be granted recognition of the foreign country money judgment," and "thereby should have the opportunity to pursue all such enforcement steps *in futuro*, whenever it might appear that defendants are maintaining assets in New York." [*Id.* at 291].
>
> On the other end of the spectrum are cases in which courts have held that attachment of assets of the judgment debtor within the state is not sufficient to provide jurisdiction, and that personal jurisdiction over the judgment debtor is necessary. [*See, e.g.*, *Base Metal Trading, Ltd. v. OJSC "Novokuznetsky Aluminum Factory,"* 283 F.3d 208 (4th Cir. 2002)].
>
> In the middle are cases that find jurisdiction to be proper when either the defendant has sufficient personal contacts to satisfy the standard minimum contacts analysis or there are assets of the defendant in the forum state, even if those assets are unrelated to the claim in the underlying judgment. [*See, e.g.*, *Pure Fishing, Inc. v. Silver Star Co.*, 202 F. Supp. 2d 905, 910 (N.D. Iowa 2002); *Electrolines v. Prudential Assurance Co.*, 677 N.W.2d 874, 885 (Mich. Ct. App. 2003)]. This is the position followed by both the Restatement (Third) of Foreign Relations Law and the ALI Proposed Federal Statute.

We adopt this last approach as the law in the RMI — that is, in order to recognize and enforce a foreign judgment, a court must generally have (1) personal jurisdiction over the judgment debtor or (2) jurisdiction over the judgment debtor's property in the forum state. *See, e.g.*, *Electrolines, Inc.*, 677 N.W.2d at 885; *Arbor*

Farms, LLC v. GeoStar Corp., 853 N.W.2d 421, 427 (Mich. Ct. App. 2014); Restatement (Third) of Foreign Relations Law, § 481, cmt. g (noting that a foreign "judgment creditor must establish a basis for the exercise of jurisdiction by the enforcing court over the judgment debtor or his property").

Because Samsung concedes there is no personal jurisdiction over Karamehmet, the issue thus becomes whether Karamehmet owns property in the Marshall Islands sufficient to support an assertion of *in rem* or *quasi in rem* jurisdiction.

B. The High Court Lacks *In Rem* or *Quasi In Rem* Jurisdiction over Focus Shares Because it Has Not Been Shown That Those Shares are Located in the Marshall Islands

1. The common law regarding the situs of corporate stock for jurisdictional purposes was unsettled

The Republic's Business Corporations Act (BCA), 52 MIRC § 13, provides:

> This Act shall be applied and be construed to make the laws of the Republic with respect to the subject matter hereof, uniform with the laws of the State of Delaware and other states of the United States of America with substantially similar legislative provisions. Insofar as it does not conflict with any other provisions of this act, the non-statutory law of the State of Delaware and of those other states of the United States of America with substantially similar legislative provisions is hereby declared to be and is hereby adopted as the law of the Republic, provided however, that this section shall not apply to resident domestic corporations.

We are thus to look to the non-statutory law of Delaware and other states with substantially similar legislative provisions in interpreting the BCA as it

applies to non-resident domestic corporations such as Focus. Delaware, by statute, considers the situs of the ownership of the shares of any Delaware corporation to be the State of Delaware. Del. Gen. Corp. Law § 169 ("For all purposes . . . [except] taxation, the situs of the ownership of the [shares of any Delaware corporation] . . . shall be regarded as in this State.").

The Marshall Islands does not have a statute (or any prior decisional authority) establishing the situs or location of a Marshall Island's nonresident domestic corporation's stock for purposes of jurisdiction, levy, attachment or execution. Notably absent from the BCA is a statute modeled after or analogous to Delaware Corporations Act § 169. The Nitijela could have incorporated that or a similar provision into the BCA, but did not do so.

In the absence of a substantially similar statute or prior decisional authority, we therefore look to the common law of the United States. As recently reiterated by our decision in *Mongaya v. AET MCV Beta LLC, et al.*, S.Ct. No. 2017-003 (Aug. 7, 2018),

> [We] must follow th[e] common law if it is not precluded by an RMI constitutional provision, statutory provision, treaty, customary law, or traditional practice. *See Republic v. Waltz*, 1 MILR (Rev.) 74, 77 (1987) ("Our holding is in accord with the greater weight of judicial authority based upon the common law, which we are obliged to follow in the absence of any provision in the Republic of the Marshall Islands Constitution, or

> in any custom or traditional practices of the Marshallese people or act of the Nitijela to the contrary."); *Likinbod and Alik v. Kejlat*, 2 MILR 65, 66 (1995) ("The 1979 Marshall Islands Constitution set forth 'the legitimate legal framework for the governance of the Republic.' . . . That framework continued the common law in effect as the governing law, in the absence of customary law, traditional practice or constitutional or statutory provisions to the contrary.")

Id. at 9-10 (footnote omitted).

The parties offer differing views and conflicting authorities on what the common law of the United States was regarding the situs of stock for purposes of execution prior to the adoption of the RMI Constitution.

Karamehmet cites numerous authorities and commentary that under the common law, corporate stock was generally regarded . . . as in the nature of a chose in action, and therefore within the rule that choses in action are not, at common law, subject to execution." *Shares of Corporate Stock as Subject to Execution or Attachment*, 1 A.L.R. 653 (citing cases); *Gulf Mortg. & Realty Invs. v. Alten*, 422 A.2d 1090, 1094 (Pa. Super. Ct. 1980) ("It is true that at common law, corporate shares of stock were not subject to levy and sale upon execution[.]") (citing *Moys v. Union Tr. Co.*, 276 Pa. 58, 60, 119 A. 738 (1923)); Pierre R. Loiseaux, *Liability of Corporate Shares to Legal Process*, 1972 Duke L. J. 947, 949 ("At common law the ownership interest in the legal fiction called a

corporation was classified as an intangible chose in action and was not subject to legal process."); Robert Laurence, *Enforcing a Money Judgment Against the Defendant's Stock and Bonds: A Brief Foray into the Forbidding Realms of Article Eight and the Fourth Amendment*, 38 Ark. L. Rev. 561, 569 (1985) ("At the common law corporate stock could not be reached, as it was intangible and incapable of physical seizure."). The same was true in Delaware — in *Fowler v. Dickson*, 24 Del. 113, 74 A. 601 (Del. Super. Ct. 1909), the court stated:

> At common law shares of stock in an incorporated company could not be the subject of attachment or levy. They were considered neither a specific chattel not a debt; but as Chief Justice Parker said, in *Howe v. Starkweather*, 17 Mass. 240, 243: "They have more resemblance to chooses in action, being merely evidence of property." Being intangible entities incapable of caption by execution and levy, and not being debts due and collectible from the corporation to the stockholder at his will, shares of stock cannot be subjected to legal process *without specific legislation providing in substance all necessary procedure.*

Id. (emphasis added).

Samsung also cites numerous authorities supporting its position that the common law considered the situs of shares to be the state of incorporation, regardless of the location of the share certificates or the business operations of the company. *See, e.g. State ex rel N. Am. Co. v. Koerner*, 211 S.W.2d 698, 701 (Mo. 1948); *Haughey v. Haughey*, 9 N.W.2d 575 (Mich. 1943); *Mills v. Jacobs*, 4 A.2d

152, 155 (Pa. 1939); *Thompson v. Terminal Shores*, 89 F.2d 652, 656 (8th Cir. 1937); *Hynson v. Drummond Coal Co. Inc.*, 601 A.2d 570, 576 (Del. Ch. 1991).

If any conclusion can be drawn by examination of the parties' authorities it is that the common law was by no means settled or uniform within the fifty states. The various conflicting common law approaches regarding the situs of stock proved unworkable. Because those common law approaches were unworkable, states sought a workable solution by adopting uniform acts such as the Uniform Stock Transfer Act (UTSA) and, ultimately, the Uniform Commercial Code (UCC).

We do not believe it necessary to reconcile conflicting common law authorities or chose between competing ancient common law doctrines regarding the situs of stock because those approaches have proven unworkable given the evolving demands of modern commerce. The High Court aptly noted that "[t]his court does not accept the abandoned historical United States common law regarding the situs of shares. . . . It makes no sense to this Court to apply abandoned 19th Century common law in the 21st Century." *Samsung Heavy Indus. Co. v. Focus Invs., Ltd.*, C.A. 2017-081, at 10. We agree.

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C. The High Court Did Not Err By Incorporating UCC § 8-112 Into the Common Law of the Marshall Islands

Where this Court must follow common law, it cannot do so blindly. Instead, if unclear or outdated common law has been abandoned in favor of statutory clarity, this Court is free to adopt that modern statutory framework as the law of the RMI. To hold otherwise, we would forever be bound to common law repudiated by the states in favor of a statutory fix. We cannot condone such an absurd result.

The modern statutory rule is that the situs of certificated shares or stock is where those certificated shares are located. This is the view expressed by the Uniform Commercial Code § 8-112 which provides in relevant part:

> (a) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (d). However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.
>
> (b) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (d).
> . . .
>
> (d) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the

> name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

The goal of the Uniform Commercial Code is, as the title implies, to bring uniformity to the laws of the States thus fostering ease and speed of commerce. To date, all fifty states, including Delaware, have adopted UCC § 8-112 or a version thereof. *See, e.g.*, https://uniformcommercialcode.uslegal.com. UCC § 8-112 has as its primary theme the negotiability of the certificates of stock. *See, e.g.*, *Calista Corp. v. DeYoung*, 562 P.2d 338, 346 (Alaska 1977). This negotiability cannot exist unless there is only one certificate for given shares, carrying with it the ownership of the shares themselves. *Id.* (citing Austin & Nelson, *Attaching and Levying on Corporate Shares*, The Business Lawyer, vol. 16, at 336 (1991)). To this end this uniform statute requires that to attach or levy upon a security, actual seizure must be had to avoid a situation where securities could be traded that are subject to liens not appearing on the face of the instrument. *Id.*

In the instant case, it is alleged that approximately 90% of Focus shares have been pledged as security. Those secured interest holders are not before this court and a purported execution on Focus shares to satisfy Samsung's English judgment against Karamehmet has the potential of causing economic loss to third parties, spurring litigation in any number of jurisdictions resulting in conflicting

judgments. Further, as pointed out by Karamehmet, RMI corporations are often used to hold assets in shipping and other international business. Were we to hold that the situs of corporate shares is the place of incorporation, as does the Delaware statute, the courts of this jurisdiction might be overburdened with litigants attempting to circumvent traditional, well established maritime remedies such as *in rem* arrest of vessels to satisfy judgments. Rather than effectuating an *in rem* arrest or attachment, such judgment creditors might chose to simply seek enforcement of judgments against a judgment debtor's shares in an RMI non-resident corporation. A lax rule which places the situs of shares of non-resident RMI corporations in the Marshall Islands for jurisdictional purposes is likely to encourage foreign judgment creditors to forum shop resulting in the proverbial flood of litigation requiring debtors with no contacts with the Marshall Islands to litigate in a distant inconvenient forum.

Samsung argues that the EJA does not provide authority for the court to create a new jurisdictional rule and, further, that the EJA has no application at this stage of the proceeding. We agree that the EJA has no application at this stage of the proceedings because Samsung has not obtained recognition of its foreign judgment. As previously discussed, there must be some property belonging to Karamehmet in the Marshall Islands over which the court can assert jurisdiction.

There has been no showing that Karamehmet has any property in the Marshall Islands over which *quasi in rem* jurisdiction can be perfected, even making allowance for the view that attachment is not necessary at the outset to establish jurisdiction. The res still has to be within the jurisdiction to support *quasi in rem* jurisdiction at the outset of the action regardless of whether attachment has been accomplished. The Court must have ultimate control of the property for enforcement. The EJA, 30 MIRC §102, provides the process to enforce a judgment as a writ of execution or order in aid of judgment. Section 106 requires attachment and safe keeping of personal property subject to the writ. If stock certificates are not present in the Republic then there is nothing to attach for purposes of execution. If the ultimate goal of Samsung is to enforce its English judgment in this jurisdiction then it would seem a waste of time to seek recognition of its judgment in the Marshall Islands if it cannot be enforced here unless, of course, Samsung's strategy is to obtain a Marshall Islands judgment with the intent of obtaining some other country's recognition of it.

The better approach to the thorny issue of where the situs of shares of a non-resident Marshall Islands corporation is, is the one adopted by the High Court and which is consistent with UCC § 8-112. We therefore hold that the situs of shares in a Marshallese non-resident domestic corporation is where the share certificates

are located, whether with the shareholder, a clearing house, or secured party, and may be reached by a creditor only by actual seizure of the security certificate or by one of the other methods allowed by UCC § 8-112 or the Marshall Islands Enforcement of Judgments Act. This holding, we believe, brings the Marshall Islands into conformity with the majority of U.S. States and into accordance with modern practice and contemporary commercial expectations.

V. CONCLUSION

For the foregoing reasons, we AFFIRM the High Court's August 10, 2017 Order Granting Defendants' Motions to Stay Action Pending Arbitration.

DATED: September 4, 2018 */s/Daniel N. Cadra*
Daniel N. Cadra, Chief Justice

DATED: September 4, 2018 */s/ J. Michael Seabright*
J. Michael Seabright, Associate Justice

DATED: September 4, 2018 */s/Richard Seeborg*
Richard Seeborg, Associate Justice