



CASE DIGEST

ALEXANDER HEYLIN



KIREEVA V BEDZHAMOV

[2024] UKSC 39

KEY TAKEAWAYS:

1. The "immovables rule", that English real property does not fall under the jurisdiction of a foreign court, is here to stay.
2. In *re Kooperman* [1928] WN 101 was wrongly decided.
3. Modified universalism is subject to local law and local public policy.
4. Public policy and practical considerations justify the rule's continued existence.
5. Further modification of the rule is left to Parliament.
6. The issue could have been avoided if the bankruptcy order was applied for in England and Wales.

ISSUE

The effect, if any, of the immovables rule on the claim of a trustee in bankruptcy appointed in a foreign bankruptcy to immovable property situated in England.

FACTUAL BACKGROUND

The case concerned real property in London ("the Property") owned by the Respondent, against whom a bankruptcy order was made by a Russian court.

The Appellant was appointed as the Russian equivalent of a trustee in bankruptcy, for the purpose of realising the Respondent's assets for the benefit of the Respondent's creditor.

A worldwide freezing order was made against the Respondents applying to all of his assets, including, expressly, the Property. Pursuant to a variation of the freezing order by the English courts, the Respondent charged his interest in the Property to his then solicitors to secure accrued and future legal costs.

The Appellant subsequently sought, from the English courts, recognition of the Russian bankruptcy order and her appointment as the Respondent's bankruptcy trustee in order to take control of the Property. The Appellant also issued an application to set aside the variation of the freezing order.

"THE IMMOVABLES RULE"

A court of a foreign country has no jurisdiction to adjudicate upon the title to, or the right to possession of, any immovable situated outside that country.

Dicey, Morris and Collins, The Conflict of Laws

FIRST INSTANCE CHANCERY DIVISION

[2021] EWHC 2281 (Ch)

[Snowden J](#)

Formally recognised the Russian bankruptcy order and Appellant's appointment by the Russian court.

Dismissed the application insofar as it sought assistance in relation to the Property and any other immovable assets in England, as well as the Appellant's Set Aside Application.

FIRST APPEAL COURT OF APPEAL

[2022] EWCA Civ 35

Majority (Newey and Stuart-Smith LJJ, Arnold J dissenting)

Upheld the decision of Snowden J as regards the Property and the Set Aside Application.

Immovables rule had the effect that a foreign bankruptcy law "will not be recognised as having conferred any interest in or right to such property on the office-holder and, absent statutory intervention, the office-holder will not be entitled to have an order vesting in him" (para 100).

Gave the Appellant permission to appeal as regards her application for assistance in relation to the Property and as regards the Set Aside Application.

STATUTORY EXCEPTIONS?

Two significant statutory measures exclude the application of the immovables rule to foreign insolvencies:

Section 426 Insolvency Act 1986

The Cross-Border Insolvency Regulations 2006

NEITHER APPLY IN THIS CASE

FINAL APPEAL SUPREME COURT

[2024] UKSC 39

Judgment given on
20 November 2024

APPEAL DISMISSED

SUPREME COURT JUDGMENT

Lord Lloyd-Jones and Lord Richards (with whom Lord Reed, Lord Briggs and Lady Rose agreed)

ROLE OF IMMOVABLES RULE

The Supreme Court recognised the continued importance of the immovable rule in English law and its protection from foreign interference:

"...at common law no recognition will be given to any provision of foreign law or any order of a foreign court which purports to affect rights to or interests in land located in England" (para 69).

As a result, the Supreme Court confirmed that the English courts could not assist the Appellant as trustee in the Russian bankruptcy to realise the Respondent's interest in the Property in England.

RE KOOPERMAN [1928] WN 101

The Supreme Court noted the Appellant's reliance on the order made in the case of *In re Kooperman* [1928] WN 101 (para 70).

Given that the application in that case was unopposed and the judge failed to give a reasonable judgment, the Supreme Court found that "*Kooperman* is not an authority on which any weight can be placed" (para 73) and, as such, provided no support for the Appellant's case.

MODIFIED UNIVERSALISM

The principle of modified universalism, as discussed in the case of *Cambridge Gas Transportation Corporation v Official Committee of Unsecured Creditors of Navigator Holdings Plc* [2006] UKPC 26, was summarised in *Singularis Holdings Ltd v PricewaterhouseCoopers* [2014] UKPC 36 as follows (para 15):

"...namely that the court has a common law power to assist foreign winding up proceedings so far as it properly can"

In the face of the Appellant's reliance on the principle, the Supreme Court emphasised the qualification that "common law powers are subject to local law and local public policy" (para 88).

As such, it would be contrary to English law, and to the principle of modified universalism, for the court to allow the Appellant's application for assistance as regards the Property.

DEVELOPMENT OF THE COMMON LAW

Having determined that the common law in its current state does not enable English courts to provide assistance to a foreign trustee in bankruptcy, the Supreme Court proceeded to consider whether the common law should be developed to enable such assistance.

Public Policy

The Supreme Court recognised that "the immovables rule reflects territorial sovereignty" (para 30) and is a "particular manifestation of wider principles of the sovereignty, equality and independence of states in international law" (para 32). For reasons of domestic public policy, it is not reasonable to expect a country to allow questions regarding its own land to be determined by courts other than its own (as Farwell LJ observed in *In re Hoyles* [1911] 1 Ch 179, 185-186).

Practical Considerations

In conjunction with the policy reasons identified above, their Lordships highlighted practical considerations rendering departure from the immovables rule inappropriate.

Given that proceedings concerning land may require actions that can only be taken by the courts in situs, or at least with their co-operation, the immovables rule operates for reasons of "convenience and expediency" (Dicey, Morris and Collins at 24-003 and 24-069).

NOTE

"In the present case, it was open to the Respondent's creditors to apply for a bankruptcy order in this country, where he had his centre of main interests and his domicile for bankruptcy purposes, rather than in Russia."

(para 110)

Other Common Law Jurisdictions

The Supreme Court recognised the English courts' approach reflected in a number of other common law jurisdictions, including the United States, Canada and Australia (paras 37-39).

Previous Legislative Modification

Their Lordships drew attention to the previous legislative modification of the immovables rule, namely section 30(1) of the Civil Jurisdiction and Judgments Act 1982 and the establishment of the two statutory exceptions.

Given that Parliament have previously reacted to a perceived need to modify the longstanding immovables rule, the Supreme Court made it clear that they considered any further modification of the immovables rule to be a matter for Parliament.

Parliamentary Sovereignty

As well as the previous legislative modifications, the "considerations of national sovereignty which underpin the immovables rule" also point to further development coming from Parliament as opposed to incremental development of the common law in the courts (para 103). The Supreme Court also noted that, for the most part, the doubts cast on the immovables rule are policy reasons "to be considered in the context of any proposal for legislative change" (para 110).

This case digest is provided for general information only.
It does not constitute legal advice and reflects the law as at 22 January 2025.

ALEXANDER'S PRACTICE ENCOMPASSES
INSOLVENCY, ARBITRATION AND
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