BEOGRAD INNOVATION LTD V SOMOVIDIS

[2025] EWHC 1182 (Comm)

KEY TAKEAWAYS:

1. English law does not recognise immovable assets as being part of the assets that are within the scope of an individual's bankruptcy in a foreign jurisdiction. (Kireeva v Bedzhamov [2024] UKSC 39, Case Digest No.1)
2. Despite modern universalism being the principle that is adopted by English law in support of foreign bankruptcy proceedings, the principle is limited in its application and not engaged on such facts in respect of immovable assets.
3. A stay, of the sort sought by the Defendant in this case, should only be granted where the applicant has demonstrated "a powerful reason" founded on the interests of justice for departing from the usual course of permitting claims over which it has jurisdiction to be determined on their merits.

ISSUE

Whether, as a matter of English law, a creditor who submits to the jurisdiction of a foreign court administering a debtor's insolvency becomes bound by the rules governing that insolvency, and the English court will take steps to uphold those rules, including by staying proceedings before it which are inconsistent with them.

FACTUAL BACKGROUND

The Defendant controlled a network of corporate entities in Russia. The Credit Bank of Moscow ("CBM") loaned money to one of these entities, Morgan LLC ("Morgan") and the Defendant personally guaranteed Morgan's primary liabilities to CBM. CBM commenced proceedings in Russia against both Morgan and the Defendant to recover the sum then outstanding. The Defendant had left Russia for England, where he has resided ever since, and it is alleged that he became the ultimate beneficial owner of two substantial properties in England. Judgment was entered against both Morgan and the Defendant in the Russian proceedings and upheld on appeal. CBM commenced bankruptcy proceedings in Russia against the Defendant and the Defendant was declared bankrupt. The Claimant commenced proceedings in England seeking enforcement of the Russian judgment and a stay.

MODIFIED UNIVERSALISM

Principle that is adopted by English law in support of foreign bankruptcy proceedings

Lord Dunedin in Galbraith v Grimshaw [1910] AC 508 at 518

"...if the Court finds that there is already pending a process of universal distribution of a bankrupt's effects that it should not allow steps to be taken in its territory which would interfere with that process of universal distribution"

Lord Hoffmann in Re HIH Casualty and General Insurance Limited and others [2008] UKHL 21

"...English courts should, so far as it is consistent with justice and UK public policy, co-operate with the courts in the country of the principal liquidation to ensure that all the company's assets are distributed to its creditors under a single system of distribution"

Lord Sumption in Singularis Holdings Ltd v Pricewaterhouse Coopers [2014] UKPC 36 at [19]

In giving effect to the principle of modified universalism, "...the court can only ever act within the limits of its own statutory and common law powers"

JUDGMENT - HHJ Pelling KC

By submitting to the jurisdiction of the Russian Bankruptcy court, as a matter of English law, the Claimant did NOT become bound by the rules governing that insolvency.

- Where the principle of modified universalism applied, it could in appropriate circumstances justify a court in England and Wales staying enforcement proceedings before it in favour of foreign insolvency proceedings.
- However, it is important to note the qualifications that judges stating and restating the principle have included within those statements (see left).
- There is nothing within those formulations that suggests that the principle is one that should be applied by a court so as to render part of a bankrupt's estate immune from distribution.

The ultimate rationale for the true rule of English law is to achieve a universal distribution of the assets on, as far as possible, a common basis.

Where the rule in relation to immovable assets at common law applies (as it does in this case) the choices lie between:

- permitting a creditor to enforce its judgment if it can against any immovable assets belonging to the judgment debtor located in England and Wales; or
- treating the judgment debtor as judgment proof to the extent of their immovable assets in England.

THE MODIFIED UNIVERSALISM PRINCIPLE IS NOT ENGAGED IN RESPECT OF IMMOVABLE ASSETS.

KIREEVA v BEDZHAMOV

In concluding that the court had no common law power to provide assistance to a trustee to gain possession of, or to realise, immovable property located in England, the Supreme Court held that:

"…the common law does not recognise the Property as being part of the assets that are within the scope of the respondent's bankruptcy in Russia"

"Under the immovables rule, as a matter of English common law, the trustee in bankruptcy has no interest in or right to the bankrupt's immovable property in this jurisdiction"

HHJ Pelling KC held that, whilst it may be the case that as a matter of Russian law the Claimant would be precluded from seeking to enforce its judgment other than in the insolvency proceedings in Russia, that is not English law, which does not recognise immovable assets as being part of the assets that are within the scope of the Defendant's bankruptcy in Russia.

HHJ Pelling KC found it was NOT IN THE INTERESTS OF JUSTICE FOR THE ENGLISH COURT TO STAY THE PROCEEDINGS.

SUBMISSION TO THE JURISDICTION OF THE RUSSIAN COURT

Whilst the English court may come to the assistance of an office holder where the bankrupt has submitted to the jurisdiction of the foreign bankruptcy court, HHJ Judge Pelling found this issue to be IMMATERIAL for two distinct reasons:

1) The stay being sought by the Defendant would not have assisted the Russian office holder; and

2) The evidence did not suggest that the Defendant had submitted to the jurisdiction of the Russian court in any meaningful sense but, in any event, it does not provide an answer to the analysis of the Supreme Court in Kireeva v Bedzhamov.

CONCLUSION

A stay such as that sought by the Defendant should only be granted where the applicant has demonstrated "A POWERFUL REASON" founded on the interests of justice for departing from the usual course of permitting claims over which it has jurisdiction to be determined on their merits.

HHJ Pelling KC found that "a powerful reason" had NOT been demonstrated as:

(a) there was no common law principle to the effect that a creditor who submits to the jurisdiction of a foreign court administering a debtor's insolvency becomes bound by the rules governing that insolvency;

(b) the true principle that applies at common law is that of modified universalism; and

(c) it is at least realistically arguable that the modified universalism principle is of no application on the facts of this case to any immovable assets owned beneficially by the Defendant located in this jurisdiction because "…the common law does not recognise [such property] as being part of the assets that are within the scope of the respondent's bankruptcy in Russia…" (Kireeva v Bedzhamov).

HHJ Pelling KC found Russian law to be irrelevant to the issues that arose.

THE DEFENDANT'S APPLICATION FAILED AND WAS DISMISSED.

ALEXANDER'S PRACTICE ENCOMPASSES INSOLVENCY, ARBITRATION AND COMMERCIAL CHANCERY. THIS INCLUDES CONSIDERABLE CROSS-BORDER AND OFFSHORE EXPERIENCE.

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