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***Kireeva v Bedzhamov*: Evaluating the Evidence and the Scope of,**

**and Limits to Common Law Recognition of a Foreign Bankruptcy**

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*Introduction*

Last year, in *Kireeva & Anor v Bedzhamov* [2021] EWHC 2281 (Ch), Snowden J, as he then was, dealt with two applications. The first was an application by Lyubov Andreevna Kireeva, the Russian trustee in bankruptcy (arbitrazh manager) of Georgy Bedzhamov, for recognition at common law of her appointment with a view to enabling her to take control of Mr Bedzhamov’s property and assets in the UK; the second was an application in existing proceedings between Vneshprombank LLC and Mr Bedzhamov, by which the trustee, a non-party, sought an order under Civil Procedure Rule (CPR) 40.9 setting aside part of an order made in March 2021 varying the terms of a worldwide freezing order originally made in 2019. The variation had the effect of permitting Mr Bedzhamov to sell a Belgrave Square property and use the proceeds of sale to pay accrued and anticipated living expenses, legal fees in connection with the defence of the UK proceedings due to come on for trial in January 2022 and other disbursements.

*Facts and Judgment*

Mr Bedzhamov is a Russian citizen domiciled in England and Wales, where he has been living since 2017. He was the subject of criminal and civil proceedings in Russia in connection with his alleged involvement in a fraud perpetrated against the bank. He is also the first defendant in UK proceedings in which the bank seeks relief arising from the alleged fraud. The bank is itself bankrupt.

The order of which recognition was sought was a bankruptcy order made on 2 July 2018 by the Russian Arbitrazh Court on proceedings brought by a judgment creditor, VTB24. The Russian trustee’s contention was that its effect was that Mr Bedzhamov’s assets worldwide had vested in her. According to her, Mr Bedzhamov had failed to cooperate with her in identifying them: she described him in her evidence as a “delinquent bankrupt”. The Belgrave Square property was one of his assets caught by the freezing order. It was believed to have considerable development value, so understandably the trustee was anxious to secure it for the bankruptcy.

Snowden J held that the Russian bankruptcy order should be recognised “at least to the extent that the English court should acknowledge its existence and the status of the Trustee.” He also held, however, that there was no basis in common law for the court to declare that Mr Bedzhamov’s property had vested in the trustee or to make an order for it to be transferred to her or sold for her benefit. After an exhaustive examination of authority going back to the 19th century, including, more recent cases such as *Cambridge Gas v Navigator Holdings* and*Rubin v Eurofinance SA*, he concluded thatno such order had been made in any of the properly argued early cases in point and, following rule 217 of *Dicey, Morris & Collins on the Conflict of Laws*, held:

“an assignment of a bankrupt’s property to the representative of his creditors, under the bankruptcy law of any foreign country, other than Scotland or Northern Ireland, is not, and does not operate as, an assignment of any immovables of the bankrupt situate in England.”

In doing so, he reminded himself of the warning Lord Collins had given in *Singularis Holdings v PricewaterhouseCoopers* of the limits to judicial power to develop the common law in this area. “I would also decline any invitation to extend the common law in the instant case,” he said.

The Court of Appeal (Newey, Arnold and Stuart-Smith LJJ) has taken a different view ([2022] EWCA Civ 35), but one largely based on Snowden J’s approach to Mr Bedzhamov’s evidence. Snowden J had noted that, unless a foreign judgment which was final and conclusive on the merits could be impeached on one of a number of well-established grounds, it could not be re-examined on its merits when recognition was sought in England (*Dicey*, Rule 48). Mr Bedzhamov had relied on a number of grounds as bars to recognition: fraud, natural justice and public policy; but the judge had decided, after detailed examination of the law on each followed by its application to the facts, that none of the bars to recognition had been made out evidentially:

“I do not accept that Mr Bedzhamov’s evidence is sufficiently strong to demonstrate that any of the bars to common law recognition apply. I also do not accept that the question of recognition should be adjourned to await the outcome of the trial in the UK [p]roceedings at which…these issues would be ventilated in evidence.”

The Court of Appeal disagreed, saying that Mr Bedzhamov’s evidence in support of his allegations of fraud should not have been rejected without its having been tested in cross- examination. As Newey LJ put it:

“[I]t seems to me, with respect, that the Judge was wrong to hold the VTB 24 Judgment to be well-founded. It was not possible to arrive at that conclusion in the face of Mr Bedzhamov’s witness statement when he had not been cross-examined on it, nor to dismiss the possibility of VTB 24 bearing responsibility for any fraud. Further, it not being suggested that the Judge’s decision to recognise the Russian bankruptcy can be sustained on any other basis, that decision must, in my view, be set aside. That is not to say, however, that the recognition application falls to be dismissed. The correct course is, I think, to remit the matter to the High Court so that directions can be given for a hearing at which Mr Bedzhamov’s evidence can be tested in cross-examination.”

The Court of Appeal did, however, uphold the principle that there is no power at common law to grant assistance to a foreign trustee in bankruptcy in relation to immovable property located in the UK. The court’s finding meant that it could not make an order vesting real property in a Russian bankrupt’s trustee in bankruptcy, order the property to be transferred to the trustee, or in some other way confer possession and control of the property on the trustee. Newey LJ said:

“The immovables rule means not just that immovable property in this jurisdiction does not vest automatically in a foreign office-holder, but that (as Story said in the passage from *‘Commentaries on the Conflict of Laws’* quoted by Ritchie J in *MacDonald v Georgian Bay Lumber Co*) ‘immoveable property is exclusively subject to the laws of the Government within whose territory it is situate’. Far, therefore, from a foreign bankruptcy giving the office-holder ‘complete dominion’ over an immovable, it 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 an order vesting it in him. Were it otherwise, there would have been no need for Astbury J to make a receivership order in *Re Kooperman* and books such as *Dicey, Morris & Collins on the Conflict of Laws*, *Totty Moss & Segal: Insolvency* and Fletcher, *‘The Law of Insolvency’* would all be mistaken in thinking the appointment of a receiver appropriate.”

And:

“Of course, as Lord Sumption explained in *Singularis*, ‘the principle of modified universalism is part of the common law’, and the common law is susceptible to development in the light of that principle. As, however, Lord Sumption also said, the principle is ‘subject to local law and local public policy’, and *Rubin* shows that changes in the law relating to international insolvency can potentially be a matter for the legislature, not the judiciary. Mr Robins argued that the creation of a common law exception to the immovables rule would properly be a matter for Parliament and that the relief available to a foreign office-holder at common law must be recognised as limited by the immovables rule. I agree. A development of the common law which allowed a foreign office-holder to obtain either title to English immovable property or its sale would involve depriving the owner of what under English law is his property. It seems to me that it is for Parliament, not the Courts, to determine whether and, if so, under what conditions that should be permissible.”

*Conclusion*

One should avoid the temptation to think of the Court of Appeal’s judgment as a setback for international recognition. In spite of the weight of learning in the Court of Appeal’s judgment, which examines routes of recognition in detail, comparatively and by reference to conflict of laws principles, one should be careful of attaching too much significance to the outcome of the appeal. We must see what happens when the case is re-heard at first instance, and after directions have been given for a hearing in which the evidence can be fully tested. In the end, it was primarily the evidential issue that prevailed on a conventional proposition. In English proceedings, the written evidence of a witness is not generally speaking to be disbelieved in the absence of cross-examination, unless it is so obviously at odds with objectively provable facts or documents that it can be rejected without being tested orally.[[1]](#footnote-1) The final result of the Russian trustee’s applications will only become clearer after that re-hearing.

1. As to the former point, see, for example, *Long v Farrer & Co* [2004] EWHC 1774 (Ch); as to the latter, Portsmouth v Alldays *Franchising Ltd* [2005] EWHC 1006 (Ch). [↑](#footnote-ref-1)