



INSIDE STORY – FEBRUARY 2016

Orders for sale of properties in Europe: a helpful reminder

Komu & Others v Komu & Another

The recent decision of the Court of Justice of the European Union in *Komu & Others v Komu & Another* serves as a reminder that it is essential to choose the correct jurisdiction in which to issue proceedings for sale of a property in Europe. That jurisdiction is usually the country in which the property is situated.

Facts

The three claimants and two defendants all lived in Finland. Together they were joint owners of two properties in Spain. The claimants had issued proceedings in Finland for the properties to be sold, on grounds equivalent to the UK's Trusts of Land and Appointment of Trustees Act 1996 which a UK Trustee in Bankruptcy would use to seek possession and sale of a property. The three claimants wished the properties to be sold and the proceeds distributed in accordance with already established beneficial interests. Under Finnish law if they disagreed as to whether the properties were to be sold they had to apply to Court, as is the position in England.

The Finnish District Court made an order for sale. On appeal the Finnish Court of Appeal set the judgment aside on the grounds that the Finnish Courts had no jurisdiction to make an Order, the Spanish Courts had sole jurisdiction. The Finnish Supreme Court referred the question of jurisdiction to the Court of Justice of the European Union.

The question for the Court of Justice

The normal rule is that proceedings should be brought in the European Member State where the defendant is domiciled (EC Regulation No 44/2001 Art 2(1)). One compulsory exception to this rule is where the proceedings have "as their object rights in rem in immovable property" (Art 6(1) Regulation 44/2001), in which case only the courts of the Member State where the property is situated have jurisdiction to determine an application.

The question for the Court of Justice in the *Komu* case was:

'Is Article 22(1) of Regulation No 44/2001 ... to be interpreted as meaning that an action by which some of the co-owners of immovable property apply for the property to be sold for the purpose of terminating the relationship of co-ownership and for an agent to be appointed to conduct the sale constitute proceedings which have as their object rights in rem in immovable property within the meaning of that provision?'

The Court of Justice therefore had to determine whether an application for sale had as its object 'rights in rem' (property). If it found that it did, the application for sale would have to be made where the property was situated, in Spain, rather than in Finland where the claimants and defendants lived.

The Court of Justice held that an application for "*termination of co-ownership in undivided shares of immovable property by way of sale*" does have as its object rights in rem, and therefore the Spanish courts had exclusive jurisdiction to determine the application.

Why does this matter?

Although this decision was not an insolvency case, the applicable law very much mirrored the terms of the EC Regulation on Insolvency which by Articles 5 and 11 give similar jurisdiction to the country in which the Property is situated. We are aware from the decision in Schmidt v Hertel that it is possible to litigate in the country in which the main proceedings were constituted to deal with assets or claims not located within that jurisdiction but the applicable law will be that in which the asset is situated.

For Trustees in Bankruptcy seeking to obtain possession and sale of a bankruptcy estate asset or company's property, it is vital to know at an early stage where proceedings are best issued and which law will apply. This will affect the likely costs and whether it is worthwhile taking the action intended.

The Court of Justice's decision is a reminder that in many cases the application for sale would be better brought in the country where the property is located, rather than in the UK where the Trustee, and often the defendant bankrupt are. There is also no doubt that, in many instances, the local courts are more content to enforce locally obtained orders.

We can advise on the most efficient way of achieving your aims and have a wide network of contacts across Europe who we work with to assist IPs in realising assets.

This Inside Story is written by Sarah May smay@moonbeever.com and Graham McPhie gmcphie@moonbeever.com of Moon Beaver Solicitors, London (UK)