COURT OF APPEAL CREATES ROADBLOCKS ON FOREIGN JUDGMENTS

SERVIS-TERMINAL LLC V DRELLE [2025] EWCA CIV 62

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Introduction

In a very significant ruling that might be subject to further appeal, the Court of Appeal held that a bankruptcy petition cannot be presented in respect of an unrecognised foreign judgment. In coming to this conclusion, the Court acknowledged the position of foreign judgments in this jurisdiction, as set out in Dicey, Morris & Collins on the Conflict of the Laws, Rule 45:

"[a] judgment of a court of a foreign country… has no direct operation in England".

The Court also recognised Parliament's determination in section 267 of the Insolvency Act 1986 ("IA 1986") that only "debts" that satisfy the section's requirements can found the presentation of a bankruptcy petition, and considered what exactly constitutes a "debt" for those purposes.

Overall, the Court of Appeal's judgment provides valuable insight into the reasoning behind the treatment of unrecognised foreign judgments by domestic courts.

Factual Background

The Appellant, Mr Valeriy Drelle, was formerly the CEO of Servis-Terminal LLC, the Respondent, which is incorporated in Russia. The Respondent was declared bankrupt by a Russian court, and its Trustee in Bankruptcy brought proceedings against the Appellant for compensation for losses resulting from a breach of directors' duties.

The Russian Court gave judgment in favour of the Respondent and the Appellant's appeal was unsuccessful. The Respondent served on the Appellant, who was by now resident in London, a statutory demand under section 268(1)(a) IA 1986.

The Respondent subsequently presented a bankruptcy petition against the Appellant, and ICC Judge Burton made a bankruptcy order against the Appellant.

Richards J dismissed the subsequent appeal and held that the fact that the Russian judgment had not been the subject of recognition proceedings in this jurisdiction did not prevent it from being the basis of a bankruptcy petition.

The Appellant appealed to the Court of Appeal and sought the setting aside of the judgment.

Court Of Appeal Judgment

In determining that the Russian judgment was not capable of providing the basis for a bankruptcy petition, the Court addressed a number of issues regarding the treatment of foreign judgments in this jurisdiction.

Defence Or "Sword"?

Rule 51 of Dicey, Morris & Collins states that a foreign judgment can be determinative on a point even in the absence of recognition or registration. However, the Court of Appeal emphasised that this rule is only concerned with defences.

Any use of an unrecognised and unregistered judgment as a "sword", including presentation of a bankruptcy petition founded on it, is objectionable. This is because the principle that a foreign judgment "has no direct operation in England" reflects the common law's aversion to enforcing a foreign exercise of power.

What Constitutes A "Debt" Under S267 Ia 1986?

The Court of Appeal, in addressing whether an unrecognised judgment is to been seen as creating a "debt" within the meaning of s267(2)(b) IA 1986, looked to the "revenue rule" as an example.

This is a rule, affirmed in Government of India v Taylor [1955] AC 491, that the courts of one country will not enforce the tax laws of another. The "revenue rule" has been identified as "a particular manifestation of a more fundamental rule, that an assertion or exercise of the sovereign right of foreign state will not be enforced by an English court": Briggs, "Recognition of Foreign Judgments: a Matter of Obligation" (2013) 129 LQR 87, 88.

There can be no doubt that the "revenue rule" precludes presentation of a bankruptcy petition in respect of a foreign tax liability. It must, therefore, serve to prevent a foreign tax from being regarded as a "debt" in respect of which a petition could be presented, notwithstanding the fact that nothing to that effect is expressed in s267(2)(b) IA 1986.

The Court found that this supports the contention that an unrecognised foreign judgment, which has no "direct operation" because it arises from an exercise of sovereign power, is likewise not to be seen as giving rise to a "debt" capable of founding bankruptcy proceedings.

The Court also recognised a distinction between judgments that confirm an underlying debt and those that create the debt. If the underlying debt is for a liquidated sum and payable immediately (or at some certain, future time), the creditor may present a petition based on the underlying debt. It would not be necessary to first obtain a judgment.

Creditors Ineligible To Petition

The fact that a person in whose favour a foreign Court has given judgment could not resort to direct execution in the absence of recognition or registration would equally prevent him from "resorting to the bankruptcy court as an alternative means of enforcement": Fletcher, The Law of Insolvency, 5th ed., para 6-027.

If the fact that the foreign judgment has not been recognised means that, in the eyes of English law, there is no debt which can be pursued, that surely means that there is no debt in respect of which a statutory demand can be properly served.

Conclusion

The Court found that, where there is no statutory provision to contrary effect, a bankruptcy petition cannot be presented in respect of an foreign judgment which has not been the subject of recognition proceedings.

While an unrecognised judgment may be determinative for certain purposes, and this in itself may be important where an application is made for recognition, it will have no direct operation in this jurisdiction and so cannot be used as a "sword".

An obligation to make a payment imposed by an unrecognised foreign judgment is not enforceable as such in this jurisdiction and, in the eyes of the law of England and Wales, does not constitute a "debt" for the purposes of s267 IA 1986.

Like the "revenue rule", this accords with the principles of independent territorial sovereignty and reflects the common law's aversion to enforcing a foreign exercise of sovereign power.

Ultimately, the unrecognised Russian judgment in the case was not capable of providing the basis for a bankruptcy petition. Accordingly, the bankruptcy order made by ICC Judge Burton was set aside and the petition dismissed.