Drelle – foreign judgement must be recognised or registered to form basis of bankruptcy petition

Bulletin No 1119

Case: Servis-Terminal LLC v Drelle [2025] EWCA Civ 62, Newey, Popplewell and Snowden LLJ, 31 January 2025

Synopsis: A bankruptcy petition cannot be presented in respect of a foreign judgment which has not been the subject of recognition proceedings. An obligation to make a payment imposed by an unrecognised foreign judgement does not constitute a "debt" for the purposes of s267 Insolvency Act 1986.

Topics Covered: Bankruptcy; debt; foreign judgement; bankruptcy petition

Comment

Overturning previous judgments made by ICC Judge Burton and Richards J, the Court of Appeal has confirmed that a foreign judgment has no direct operation in England as a matter of common law unless and until such judgment has been properly recognised or registered. Until that recognition or registration has occurred, amounts owed pursuant to a foreign judgment cannot constitute "debt" nor be considered "payable" in the context of s267 IA 1986. As there have been suggestions in academic writing that the rule may have exceptions in relation to serving statutory demands in terms of foreign judgments, Snowden LJ sought to address this commentary. Relying on the case of *Government of India v Taylor*, Snowden LJ dismisses the assertions as inaccurate.

The decision should be noted by creditors seeking to rely on foreign judgments in English bankruptcy proceedings, with such reasoning likely applicable to other English insolvency processes where a party is seeking to adduce a foreign judgment as existence of a debt. While recognition / registration proceedings may be a procedural formality, that step should not be skipped. In respect of foreign law debts owed by English obligors, it should also be noted that a foreign judgment may not be necessary (at least from the perspective of the English courts) in order to enforce a debt claim in England, with the English courts having the ability to determine a position under foreign law (with the assistance of foreign law evidence and experts where necessary) and apply that position to the facts of a particular case.

Facts

The facts of this case and the first instance and High Court appeal judgments are summarised in **Technical Bulletin 1068**, but are summarised here for ease of reference.

By a judgment of the Russian Arbitrazh Court of Yaroslav Oblast dated 24 May 2019 (the Judgment), Mr Drelle was ordered to pay damages to Servis-Terminal LLC (the Company) in the amount of RUB 2 billion (the Debt).

Him being now resident in London, the Company served a statutory demand on Mr Drelle in 2020 in the UK, and subsequently presented a bankruptcy petition against him on the basis of the Debt.

The Company obtained a bankruptcy order against Mr Drelle before ICC Judge Burton on 31 March 2023. Mr Drelle appealed, but the appeal was dismissed by Richards J on 11 March 2024, holding that the fact that the Judgment had not been recognised or registered in this jurisdiction did not prevent it from being relied on as the basis of a bankruptcy petition. In reaching his judgment, Richards J referred to Rule 51 of Dicey, Morris & Collins The Conflict of Laws (Dicey) in the current edition, which states that "*a foreign judgment which is final and conclusive on the merits and not impeachable... is conclusive as to any matter thereby adjudicated upon, and cannot be impeached for any error either (1) of fact; or (2) of law*". Richards J further noted that the Debt was not the subject of a *bona fide* dispute on substantial grounds.

Decision

The leading judgment was delivered by Newey LJ. Despite reviewing some academic evidence expressing a contrary view, he concluded that, where there is no statutory provision to contrary effect, a bankruptcy petition cannot be presented (i.e. used as a "sword") in respect of a foreign judgment which has not been the subject of recognition proceedings or which has not otherwise been correctly registered. Whilst a foreign judgment can be

considered conclusive on the points decided in it per Rule 51 of Dicey (which may be important when an application is made for recognition of such a judgment), an unrecognised/unregistered (and therefore unenforceable) foreign judgment does not constitute a “debt” for the purposes of s267(1) IA 1986. Any debt for the purposes of s267 must also be “payable” either immediately or at some certain future time per s276(2)(b), which will not be the case in this jurisdiction if the judgment is unenforceable pending recognition or registration.

This is because a sum payment for which a foreign judgment provides is not to be properly regarded as “payable” for the purposes of s267(1)(b), unless and until the judgment is recognised in this jurisdiction.

Snowden LJ agreed with Newey LJ’s reasoning and in a concurring judgment added that the definition of the word “debt” in s267 should not be understood as including payment obligations created by foreign judgments just because the word itself was not qualified in the IA 1986. He drew on the case of *Cambridge Gas Transportation v Official Committee of Unsecured Creditors of Navigator Holdings* [2007] 1 AC 508 to observe that bankruptcy and winding up proceedings do not create new rights, they are simply collective enforcement proceedings,, and *Government of India v Taylor* [1955] AC 491 which saw the meaning of the word “liabilities” in s302 Companies Act 1948 qualified so as to account for the common law rule that English courts cannot enforce a foreign revenue law.
