

## ENGLISH SUPREME COURT LIMITED IN THE ASSISTANCE IT CAN PROVIDE UNDER COMMON LAW TO TRUSTEE IN BANKRUPTCY

On 20 November 2024, the English Supreme Court delivered its judgment in the case of *Kireeva v Bedzhamov* [2024] UKSC 39. This addressed the limitations of the common law in aiding a trustee in bankruptcy appointed in Russian bankruptcy proceedings and the trustee's rights to claim a property located in London.

The Russian trustee sought assistance to include the London property in the Russian bankruptcy estate and to realise the property for the benefit of the creditors of that estate. The assistance that the court could provide was limited by the 'immovables rule'. This is a principle of private international law stating that rights in immovable property (i.e. real estate) are governed by the law where the property is located. Consequently, the Russian bankruptcy had no bearing on the London property, thereby excluding it from the Russian bankruptcy estate.

The ruling highlights that while common law assistance is limited, statutory frameworks such as the Cross Border Insolvency Regulations 2006 (CBIR) and section 426 of the Insolvency Act 1986 may still provide mechanisms to aid foreign insolvency officeholders under specific conditions and provide exceptions to the immovables rule.

These statutory recognition procedures are generally favoured by overseas officeholders seeking assistance from the English courts in cross border cases. Although, they were not available in this particular case, hence the reliance on common law principles. The CBIR provides a wide range of procedural relief, including allowing foreign insolvency representatives to manage assets located in Great Britain if creditors are protected, without imposing any geographical constraints or requirements as to reciprocity in relation to the foreign insolvency. However, this option was unavailable to the Russian trustee because the debtor's centre of main interest (COMI) and its establishment was in the UK rather than Russia and therefore the Russian bankruptcy did not meet the definition of foreign insolvency proceedings for the purposes of the CBIR. Section 426 requires the English court to provide assistance to foreign insolvency representatives from designated countries or territories, including the application of foreign insolvency laws for designated countries, but the list of designated countries and territories does not include Russia.

### Key issues

- The Supreme Court highlights that the immovables rule limits the insolvency assistance it can provide under common law
- Cross Border Insolvency Regulations 2006 and section 426 of the Insolvency Act provide statutory exceptions to the immovables rule
- The statutory exceptions were not available in this case, but a UK bankruptcy process could have been commenced
- Changes to the immovables rule to facilitate international cooperation require legislation

The Supreme Court emphasised that modifications to the immovables rule for the purposes of enhancing international cooperation were not available as a matter of the common law but are legislative matters due to territorial sovereignty considerations associated with land. The decision reflects the principle of modified universalism, suggesting that any further exceptions to the immovables rule should be determined by Parliament. The Supreme Court noted that England is not unique in its application of the immovables rule, as similar practices exist in jurisdictions like the US, Canada, and Australia.

The decision is consistent with a previous ruling in *Rubin v Eurofinance SA* [2012] UKSC 46, where recognition of foreign insolvency related judgments was denied based on common law principles. The Supreme Court reiterated that any fundamental legal changes should be legislated, not judicially determined. The Supreme Court's approach in the *Rubin* case has been somewhat borne out by the proposal to incorporate a new Model Law on Insolvency Related Judgments announced in 2022; however, implementation of this proposal is still under consideration.

Despite the decision that the London property remains outside the Russian bankruptcy available for the debtor, the Supreme Court observed that creditors could have initiated UK bankruptcy proceedings, thereby including the property in the estate.

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