

Recognition of Foreign Insolvency Proceedings

There has been some concern at the reluctance of the English Courts to recognise and assist appointees in foreign insolvency proceedings when they seek its assistance and co-operation pursuant to the Cross-Border Insolvency Regulations 2006 (“the Regulations”). This might now be dispelled by a recent decision of the Court of Appeal in *David Rubin and Anor (Joint Receivers and Managers of Consumers Trust) v Eurofinance S.A & Others* [2010] EWCA Civ 895.

The case involved a Trust governed by English law but whose assets and creditors were mainly based in the United States and Canada. The Trust faced financial difficulties so the beneficiary decided to commence Chapter 11 proceedings in the United States.

However, before the Chapter 11 proceedings could be commenced, the English Court had to appoint the appellants as Receivers of the Trust. Following their appointment the Receivers were given permission by the English Court to apply in New York for Liquidation under Chapter 11. The Court in New York approved the Liquidation of the Trust, and appointed the Receivers as the Legal Representatives and Foreign Representatives of the Trust in respect of the US liquidation proceedings.

As the Foreign Representatives of those insolvency proceedings, the Court in New York gave the appellants authority to apply to the English Court for recognition of the US liquidation proceedings as a foreign main proceedings pursuant to the Regulations. Further to seek the English Court’s assistance in connection with, in particular, the enforcement of judgments in those proceedings against persons or entities in the English jurisdiction.

The appellants commenced proceedings in the US liquidation proceedings against the respondents, obtained judgments and then applied to the English Court for recognition of the US liquidation proceedings as a foreign main proceedings and enforcement of the US judgments against the defendants in the English jurisdiction.

The defendants disputed whether the US liquidation proceedings and the appointment of the appellants as the Foreign Representative of the debtor could be recognised. Further that the judgments obtained in those proceedings could be enforced by the English Court on the grounds that they were not subject to the jurisdiction of the US courts.

The English Court at first instance recognised the US liquidation proceedings as a foreign main proceedings and the appointment of the appellants as the foreign representatives. However it refused to enforce the US judgments.

The Court of Appeal overturned the last part of that decision on the basis that the US judgments were obtained in proceedings that formed an integral and central part of the US liquidation process for the collective benefit of the creditors. Accordingly they

are governed by the private international law rules relating to bankruptcy and not subject to the ordinary private international law rules preventing enforcement of judgment because the defendants were not subject to the jurisdiction of the foreign court.

Further, in reaching its decision the Court of Appeal confirmed that the US liquidation proceedings must be recognised as a foreign main proceeding and concluded that *“having been duly authorised in the foreign proceedings, the appellants must be recognised as foreign representatives”*.

The fact that the English Court was instrumental in the commencement of the foreign insolvency proceedings may explain why it was prepared in this case to accept the appellants appointed as foreign representatives of the debtor in those proceedings. Nevertheless the Court of Appeal’s recognition of the appointment and enforcement of the judgment in this case provides a helpful precedent for appointees in other foreign insolvency proceedings seeking similar recognition and assistance in the enforcement of judgments for the collective benefit of the creditors.

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