Claim No.: BL-2019-000374

Neutral Citation Number: [2019] EWHC 1519 (Ch)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES (ChD)
BUSINESS LIST

Rolls Building
7 Rolls Building
Fetter Lane
London, EC4A 1NL

Friday, 10 May 2019

Before:

THE HONOURABLE MR JUSTICE MARCUS SMITH

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Between:

YURI VLADMIROVICH ROZHKOV
(As Trustee and Financial Administrator of Larisa Ivanovna Markus)

Applicant

- and -

LARISA IVANOVNA MARKUS

Respondent

YURI VLADMIROVICH ROZHKOV
(As Trustee and Financial Administrator of Larisa Ivanovna Markus)

Applicant

-and-

(1) DALLAS & CO SOLICITORS
(2) JAFFE PORTER CROSSICK LLP

Respondents

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Mr William Wilson appeared on behalf of the **Applicant**

The Respondents did not appear nor were represented

Hearing date: 10 May 2019

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Approved Judgment

MR JUSTICE MARCUS SMITH:

Introduction

1. Ms Larisa Markus is a Russian citizen. She is, or perhaps was, the founder, shareholder and president of Vneshprombank, a Russian bank ("the Bank").

2. The background to the two applications before me today is as follows. The Central Bank of Russia appointed provisional administrators over the Bank on 18 December 2003 and revoked the Bank's licence on 21 January 2016. On 14 March 2016, the Bank was declared bankrupt by the Moscow State Commercial Court. The State Deposit Insurance Agency was appointed as the receiver of the Bank.

3. On 19 December 2015, Ms Markus was detained on charges of committing large-scale fraud and embezzlement in relation to the Bank. Criminal proceedings in connection with the fraud were commenced against her in late December 2015. The fraud was a considerable one: the loss and damage arising out of it was estimated at £1.3 billion. On 20 March 2017, Ms Markus pleaded guilty to the charges of fraud against her, and she was sentenced, after appeal, to 8½ years' imprisonment. She remains in Moscow serving her sentence.

4. On 19 April 2016, an application was made for the commencement of personal bankruptcy proceedings against Ms Markus in Russia by Bank VTB24 as creditor. On 25 May 2017, the Moscow State Commercial Court determined that there was no evidence that Ms Markus was eligible for a restructuring of her debts and that there was evidence that she was bankrupt. So a bankruptcy order was made. I shall refer to this bankruptcy as the "LM Bankruptcy".

5. Mr Rozhkov, who is the applicant before me today in all three applications, is a financial manager and bankruptcy trustee based in Moscow. He is a licensed insolvency practitioner. By the bankruptcy order made in the LM Bankruptcy, Mr Rozhkov was appointed as Ms Markus' trustee and financial administrator. As a matter of Russian law, he is the only person entitled to exercise rights over her property. What is more, any transaction made by the debtor – by Ms Markus – without the financial manager is null and void. The Russian trustee is the only person authorised to represent her.

6. At present there are two creditors, and only two creditors, making claims in the LM Bankruptcy. As I say, those claims are substantial, amounting to about £1.3 billion. Since his appointment, Mr Rozhkov has taken steps in Russia to identify, collect in and begin to realise the assets in Russia belonging to Ms Markus. He has only recently obtained the funding necessary to enable him to take steps outside Russia. He has commenced doing so. On 10 January 2019, Mr Rozhkov presented a petition to the US Bankruptcy Court for an order recognising the LM Bankruptcy in New York. The US Bankruptcy Court granted that order recognising the LM Bankruptcy and making certain orders in relation to ancillary relief.

The first application: recognition of the LM Bankruptcy

7. The first matter before me today concerns the recognition of the LM Bankruptcy in this jurisdiction. The law in relation to this is contained in various provisions of the Cross-Border Insolvency Regulations 2006 ("CBIR"), in particular Schedule 1 which contains the relevant provisions of the Uncitral Model Law on Cross-Border Insolvency. If the jurisdictional requirements under the CBIR are met, then I am obliged to recognise the foreign insolvency proceedings: there is no discretion, provided the relevant jurisdictional requirements are met. The process was described as something of a "tick-box" exercise in *Re Transfield ER Cape Limited* [2010] EWHC 2851 (Ch) at [1].

8. The Article 2(i) of Schedule 1 of the CBIR defines a "foreign proceeding" is defined as "a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation."

9. I have before me certain evidence regarding the relevant Russian bankruptcy law in the form of the first statement by Mr Sergey Sokolov dated 25 March 2019. I am in no doubt that the LM Bankruptcy is a foreign proceeding, and that the requirements of Article 2(i) are satisfied. To be a little more specific, the LM Bankruptcy is being conducted pursuant to a law relating to insolvency, namely the Russian Federal Law No 127-FZ of October 2002 on Insolvency Bankruptcy. It is a collective judicial procedure, operating under the control of, and being supervised by, Russian courts. The purpose of the LM Bankruptcy is to reorganise or liquidate. In this case, there has been an unsuccessful attempt to restructure Ms Markus' debts, and the LM Bankruptcy is a liquidation.

10. In these circumstances, I am satisfied that this is a case of a foreign proceeding for the purposes of Article 17 of Schedule 1 to the CBIR. There are various other requirements under the CBIR that need to be satisfied, in addition to the "foreign proceedings" requirement:

    i) I must be satisfied that Mr Rozhkov is a "foreign representative" within the meaning of the CBIR, which I am by reason of the evidence that I have seen. He is the trustee and financial administrator in the LM Bankruptcy. So Article 17(1)(b) of Schedule 1 of the CBIR is satisfied.

    ii) As regards Article 17(1)(c) of Schedule 1 of the CBIR, the requirements of the preceding Article 15(2) and (3) are met. I have seen a copy of the decision commencing the LM Bankruptcy appointing Mr Roshkov as trustee and financial administrator. I point out that I have seen it in Russian, but I have been helpfully assisted by the English translation thereof.

iii) In accordance with Article 15(3), the recognition application is accompanied by a statement from Mr Rozhkov identifying that, with the exception of the LM Bankruptcy and the United States Chapter 15 Proceedings, there are in respect of Ms Markus no foreign proceedings, i.e. no foreign insolvency proceedings, within the scope of Article 2(i) of Schedule 1 of the CBIR. Therefore, that requirement is also met.

iv) Finally, pursuant to Article 17(1)(d) of Schedule 1 of the CBIR, the Recognition Application has been submitted to this court, which is the appropriate court in accordance with Article 4 of Schedule 1 of the CBIR.

11. I am satisfied that the jurisdictional requirements are met. I am also satisfied that the "centre of main interests" (the "COMI") is Russia. In the case of Ms Markus, she had her place of habitual residence in the Russian Federation. She is a Russian citizen. That was the case both before and after her conviction in the Russian courts, and she is of course now in prison in Russia. I conclude, therefore, that there is no reason for displacing the general presumption that the COMI in this case is the Russian Federation.

12. Finally, it is possible that a court can refuse recognition of the foreign proceedings on grounds of public policy, pursuant to Article 6 of Schedule 1 of the CBIR. The test is whether recognition would be manifestly contrary to the public policy of Great Britain. I can see nothing to suggest that in this case recognition would be contrary to public policy. Whilst it was entirely right to raise this point for my attention, there is no issue of public policy in this case.

13. I am, therefore, prepared to make the recognition order that is sought. Furthermore, I am asked to make the provisional order that was made by Arnold J, when the matter was before him, final. It seems to me that there is no reason not to do so, and indeed it is the logical consequence of my being prepared to recognise the foreign proceedings. In these circumstances, I am prepared to make the recognition order that is sought and to make the LM Preservation Order final. It seems to me that if I correct the time to 11.58am (the time of my order), I can make the order in those terms.

The second application: obtaining of information from Dallas and JPC

14. The next application that is before me is brought by Mr Rozhkov against two firms of solicitors, Dallas & Co Solicitors ("Dallas") and Jaffe Porter Crossick LLP ("JPC").

15. This application relates to property referred to before me as the "Albert Court Property", which term I adopt. This is a substantial property, acquired by Ms Markus in 2000, for the sum of some £6 million. Until recently, that property was being marketed for sale by Knight Frank for £5.95 million.

16. The property was made the subject of a preservation order by Arnold J. That order required prior notice of the sale or completion of the sale of the property to be given to Mr Rozhkov's solicitors, for the purchaser of the property to agree to pay the proceeds of any sale to the English solicitors acting in the

sale, and for those solicitors to undertake to hold the proceeds of sale (less costs and expenses) pending further order of the court, or to pay those proceeds into court.

17. As it has turned out, the order of Arnold J was redundant, in that the sale in fact took place some two days before the hearing before Arnold J at which the preservation order was made. The applications before me today are therefore in order to obtain further information as to what has occurred in relation to the sale of the Albert Court Property. Both of the solicitors, Dallas and JPC, were involved in the sale. I do not, for the purposes of this ruling, need to explain exactly how that involvement arose, save to note that I am satisfied that both solicitors are likely to hold information that will enable Mr Rozhkov to work out what has happened to what are the no doubt very substantial sale proceeds of the Albert Court Property.

18. Both solicitors have declined voluntarily to provide information in response to requests by Mr Rozhkov's solicitors. That is not surprising. They no doubt have an obligation of client confidentiality. It is certainly not an unreasonable stance to say that they will only provide such information pursuant to an order of the court. It is also fair to record that both solicitors are taking a neutral stance in relation to this application. They are not before me today, but whilst they are not consenting to the application – that would be inappropriate – they are not opposing it.

19. The application is under Article 21(1)(d) of Schedule 1 of the CBIR alternatively Article 21(1)(g). In my judgment, this is a case where disclosure is clearly necessary to protect the assets of the debtor and to further the interests of the creditors. It is, I accept, a paradigm case where the court should exercise its discretion in favour of the foreign representative in order to enable information regarding the sale proceeds to be obtained. I have before me an order to this effect which I am prepared to make.

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