Recent case summaries

The latest insolvency update from **Jeremy Richmond QC** and **Benjamin Joseph**.

Andrew* v. *Kingsway Asset Finance

In *Andrew* v. *Kingsway Asset Finance* [2020] BPIR 1069 the respondent to a bankruptcy petition, Mr Andrew, applied under s284 of the Insolvency Act 1986 for a validation order for the proceeds of the sale of two properties to be paid (i) to discharge certain mortgage arrears, and (ii) to meet his past and future legal costs (£42,600 and £54,400 respectively) and ongoing living expenses (£6,700 per month). A supporting creditor, Kingsway Asset Finance, opposed the application and was represented at the hearing by the author, Jeremy Richmond QC. The petitioning creditor was formally neutral as to the application.

Section 284 of the Insolvency Act 1986 provides that where a person is adjudged bankrupt any disposition of property made by that person between the presentation of the petition and the bankruptcy order is void except to the extent that it is or was made with the consent of the court, or is subsequently ratified by the court. It was common ground between the parties that the principles concerning the validation of payments in the context of corporate insolvency were applicable by analogy – *viz* whether there is some special circumstance that shows that the disposition in question will be or has been for the benefit of the general body of unsecured creditors such that it is appropriate to disapply the usual *pari passu* principle. As for the question of the validation of legal expenditure, however, the judge drew a distinction between the principles applicable in the context of corporate and personal insolvency respectively. The judge considered that the court had broad discretion in the context of personal insolvency to validate the payment of legal fees in relation to bankruptcy proceedings and, particularly, in relation to legal fees incurred in contesting the existence of the petition debt. The rule was said to be justified by the *'dictates of humanity'* in *Re A Debtor* [1937] Ch 92 and *Rio Properties Inc* v. *Al Midani* (August 2, 2002, unreported).

The judge dismissed Mr Andrew's application concerning the sale of the two properties on the basis that Mr Andrew had not provided sufficiently cogent or detailed evidence to justify the court exercising its powers under s284. The judge also rejected the application as far as the legal costs were unrelated to the bankruptcy proceedings but validated a payment of £500 per month as regards Mr Andrew's solicitor's outstanding fees relating to the bankruptcy proceedings. The judge also validated a payment of £500 per month for Mr Andrew's living expenses.

> **The judge considered that the court had broad discretion in the context of personal insolvency to validate the payment of legal fees in relation to bankruptcy proceedings and, particularly, in relation to legal fees incurred in contesting the existence of the petition debt.**

Re Bedzhamov

In *Re Bedzhamov* [2021] EWHC 2281 (Ch), the court conducted a detailed examination of authorities relating to the recognition of foreign insolvency proceedings at common law and the effect of such recognition. The judgment provides useful guidance which is particularly pertinent in the wake of the UK's exit from the EU.

The applicant (A) was a trustee in bankruptcy appointed in Russia in respect of the respondent (B). A applied for an order recognising A's appointment in Russia, and for the right to take possession of and sell B's English assets, including (perhaps unsurprisingly) valuable immovable property in Belgrave Square.

The UNCITRAL Model Law and the Cross-Border Insolvency Regulations 2006 (CBIR) regime did not apply, as B was resident in England, and as such the Russian insolvency proceedings (the Russian proceedings) did not take place in the country in which B had his centre of main interests or an establishment.

The court was therefore asked to recognise the Russian proceedings at common law. The court held the application for recognition at common law was to be decided for the most part in accordance with the ordinary principles of recognition of foreign judgments.

The court found that B had submitted to the jurisdiction of the Russian court by submissions that were made on his behalf in the Russian proceedings and that B could not impeach the Russian proceedings on the basis of (i) fraud, (ii) natural justice or (iii) public policy. The court interpreted those exceptions on the basis of well-established authority in the context of recognition of foreign judgments, and decided that there were no applicable bars to recognition on the facts.

Snowden J went on to consider the effect of common law recognition of a foreign insolvency. Upon recognition of a foreign bankruptcy, the bankrupt's moveable property is treated as *automatically* vesting in the foreign trustee, without any further assistance or relief of the court, provided that (i) the law of the foreign bankruptcy provides for its extraterritorial effect and (ii) property passes subject to any existing charges upon it recognised in England.

By contrast, the court found that (a) there was no general power at common law to make an order vesting English immoveable property in the foreign trustee in bankruptcy and (b) that it would be wrong to extend the common law by granting such relief as would be available under the CBIR by analogy or as if the CBIR did apply, in line with the restraint urged by Lord Collins in *Singularis Holdings* v. *PwC* [2015] AC 1675.

While A's application for recognition was therefore successful, its application for further assistance in relation to the immoveable property failed. □

> **The court held the application for recognition at common law was to be decided for the most part in accordance with the ordinary principles of recognition of foreign judgments.**

JEREMY RICHMOND QC is a barrister at Quadrant Chambers.

BENJAMIN JOSEPH is a barrister at Quadrant Chambers.