

## Cross-Border Insolvency: Continuing Authority of Local Representative – *Allen v Der London Ltd*

Thursday 22 June 2023



James Morgan KC

Call: 1996

Silk: 2017

In July 2019, Mr Derev was made bankrupt in Russia. His bankruptcy manager, Mr Protasov, applied for and obtained a recognition order in England. In February 2021, Adam Johnson J made an order under Article 21 of the Model Law entrusting Paul Allen of FRP Advisory with the administration and realisation of Mr Derev's assets in Great Britain and entitling him to exercise the powers of a trustee in bankruptcy under the laws of England and Wales.

On 4th August 2022, Mr Allen presented a winding up petition in England against Der London Ltd ("Company") on the basis that it owed the bankruptcy estate US\$2.25m pursuant to a judgment obtained by Mr Protasov against the Company in Russia in 2021. The petition was defended on the basis that, contrary to the judgment, the debt had in fact been repaid in 2019.

Unfortunately, in December 2022, Mr Protasov passed away. In January 2023, he was replaced as bankruptcy manager by Mr Pantyukhin. Subsequently, Mr Pantyukhin applied under Part 4 of Schedule 2 to the Cross-Border Insolvency Regulations 2006 for confirmation of his status as that replacement.

Prior to the final hearing of that application, the petition came on for final hearing before ICC Judge Burton on 13th June 2023. The Company requested an adjournment on the basis that there was doubt as to Mr Allen's authority to prosecute the petition. In particular, it was argued that (1) his authority had ceased on Mr Protasov's death and (2) Mr Pantyukhin had not obtained approval in Russia for the engagement of Mr Allen in England.

ICC Judge Burton rejected the request for an adjournment on the basis that (1) the recognition order was made in respect of the Russian bankruptcy proceedings, (2) the Russian bankruptcy proceedings had continued notwithstanding Mr Protasov's passing and (3) whatever be the position in Russia, Mr Allen's authority to act in Great Britain derived from the order of Adam Johnson J and there was no application before her to set aside or vary that order (c.f. *Isaacs v Robertson* [1985] 1 AC 97).

The Judge went on to reject the Company's defence to the petition and make a compulsory winding up order. In particular, the Judge was satisfied that (1) the Russian judgment was enforceable in England and Wales and therefore gave rise to a debt that could form the basis of a petition, (2) as with an English judgment, the court should not go behind the Russian judgment in the absence of fraud, collusion or some miscarriage of justice (*Re Menastar Finance Ltd* [2003] BCC 404) and (3) the evidence relied on by the Company fell far short of meeting that test.

The Judge's approach underlines the importance of the applying the precise wording of English recognition orders whilst at the same time respecting properly conducted foreign judicial processes. There is now a solid line of authority which, expressly or implicitly, supports the proposition that an enforceable foreign judgment gives rise to a debt that may form the subject of winding up or bankruptcy proceedings – see *Sun Legend Investments Ltd v Jade Yuk Kuen Ho* [2013] BPIR 532; *Pace Europe Ltd v Dunham* [2012] BPIR 836; and the Judge's own very recent decision in *Servis-Terminal LLC v Drelle* [2023] EWHC 506 (Ch).

James Morgan KC was instructed to act for Mr Allen by Seladore Legal.

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