Lexis®Nexis Case Summaries

Re Al Saud;
Al Saud v Mobile Telecommunications Company KSCP

[2023] EWHC 1144 (Ch), [2023] All ER (D) 86 (May)

The Chancery Division held that, applying settled principles and the lower standard of proof, the respondent company (MTC) had shown a good arguable case, on the evidence, that the applicant debtor, who was a member of the Saudi royal family, had had a place of residence in England during the relevant period, and that MTC had demonstrated 'a good reason' to authorise service on the debtor out of the jurisdiction and by alternative methods for the purposes of CPR 6.15(1), both as at the date of the service order and at all material times since. The court so ruled in circumstances where: (i) MTC had presented a bankruptcy petition against the debtor, concerning debts arising under a series of arbitration awards; (ii) MTC had been granted permission to serve the petition on the debtor out of the jurisdiction by substituted service on his solicitors in London, or alternatively outside the jurisdiction and by alternative means, having relied on section 265(2)(b)(i) of the Insolvency Act 1986 (the service order); (iii) the debtor had applied to set aside the service order (the 2022 set aside application); and (iv) MTC had renewed its application for leave to serve the petition out of the jurisdiction and by alternative means. The court found that the relevant considerations included: (a) the timing of the debtor's mother's purchase of a property in London (York House); (b) the fact that the debtor had lived at York House, as a student, for several years during term-time and that he had a long-standing connection with York House; and (c) the fact that he had been registered at York House, for council tax purposes, while he had been a student, and that he had continued to be so registered, almost 30 years after he had ceased to be based in London as a student. Accordingly, the 2022 set aside application was dismissed.

Catchwords

PRACTICE – BANKRUPTCY PETITION – SERVICE OUT OF JURISDICTION

Background

The applicant (the debtor) was a member of the Saudi royal family.

In 2015, the respondent company (MTC) was the successful claimant in arbitration proceedings in London against the debtor, regarding a loan agreement (the arbitration).

MTC presented a bankruptcy petition (the 2022 petition) against the debtor, concerning debts of US$885,800,268.67 and £3,292,847.55 which arose under a series of arbitration awards made in 2015-2018 (the arbitration debts).

MTC applied for permission to serve the 2022 petition on the debtor out of the jurisdiction by substituted service on his solicitors in London, or alternatively outside the jurisdiction and by alternative means. That application was granted (the service order).

The debtor applied to set aside the service order (the 2022 set aside application).

MTC renewed its application for leave to serve the 2022 petition out of the jurisdiction and by alternative means (the renewed service application).

Issues and decisions

Whether MTC had shown a good arguable case that the debtor had had a place of residence in the jurisdiction of England and Wales during the relevant period.

MTC relied on section 265(2)(b)(i) of the Insolvency Act 1986 (IA 1986), namely, that the debtor had had a place of residence in England at any time in the three years ending with the date on which the petition had been presented i.e., 1 June 2019 to 1 June 2022 (the relevant period).

Applying settled law and the lower standard of proof which Justice Roth had confirmed applied to the present application, and taking all matters into account, MTC had shown a good arguable case, on the evidence, that the debtor had a place of residence in the jurisdiction during the relevant period, and MTC had the better of the argument (see [35], [43]-[51], [144] of the judgment).

Even if the court had concluded that it could not make a reliable assessment of whether the [jurisdictional] gateway provisions were satisfied, it would have concluded that MTC had, at the very least, met the *Brownlie* (iii) threshold i.e., it had shown that there was a plausible (albeit contested) evidential basis for the application of the relevant jurisdictional gateway. Further, MTC had demonstrated 'a good reason' to authorise service on the debtor out of the jurisdiction and by alternative methods for the purposes of CPR 6.15(1), both as at the date of the service order and at all material times since (see [145], [146] of the judgment).

Accordingly, the 2022 set aside application would be dismissed (see [147] of the judgment).

As the debtor was resident in Saudi Arabia, the court had to be satisfied that the petition could be served out of the jurisdiction, even if it was intended that service by alternative means be effected within England (see [43] of the judgment).

By Schedule 4 to the Insolvency (England and Wales) Rules 2016, SI 2016/1024, CPR 6 applied to the service of documents outside the jurisdiction. Schedule 4 also provided that a bankruptcy petition was to be treated as a claim form for the purposes of CPR 6 (see [44] of the judgment).

CPR 6.37 provided that the court's permission was required for the service of a claim form out of the jurisdiction. One of the conditions for permission to serve out to be granted was that the claim fell within one of the jurisdictional gateways in PD 6B para 3.1. The standard of proof required to show that a claim fell within one of the jurisdictional gateways was not the balance of probabilities, but rather, the lower standard of 'good arguable case' (see [45], [46] of the judgment).

The grounds of jurisdiction for a creditor's bankruptcy petition were set out in IA 1986, s 265 (see [51] of the judgment).

In the present case, when considering whether the debtor had a place of residence in England and Wales in the relevant period, the following considerations were relevant: First, the timing and purpose of the purchase of York House (an apartment in London), which had been purchased by the debtor's mother (the mother) as a family home in 1976, when the debtor, her only son, had been just 15 and still in her care. Second, the fact that the debtor had lived for several years during term-time at York House over the period 1983 to 1990, while he had been a student in London, was a relevant consideration. The debtor had a long-standing connection with York House. Third, the court took into account the fact that the mother only used York House for 10-13 weeks over the summer months each year. The rest of the year, the property was furnished, but vacant and available for members of the family to use. Fourth, the court took into account the clear evidence of the mother's continued commitment to ensuring that her family (including the debtor) had access to family accommodation in London, as and when required. Fifth, notwithstanding the recent attempts of the debtor and his mother to assert otherwise, the evidence, as a whole, strongly supported the conclusion that the debtor had, at all material times, since completing his studies in 1990 (including the relevant period) continued to enjoy ongoing permission to use York House as his personal place of residence when in London, subject only to checking availability and making arrangements to collect the keys. Further, the debtor had been registered at York House for council tax purposes while he had been a student, and he had continued to be so until December 2019, almost 30 years after he had ceased to be based in London as a student and some time into the relevant period. That continued to be significant in the context of the current application (see [100]-[133] of the judgment).

It followed that the language of permission firmly at the forefront of the debtor's evidence had to be considered against the 'hard facts'. The mother had, through her actions over the years, demonstrated a clear longstanding commitment to providing for her family and ensuring that all family members had access to family accommodation in London, as and when required. While, in light of the arbitration and the awards made, the beneficial ownership of the 'New London Properties' had been carefully arranged with a view to ensuring that the debtor had no beneficial interest that could be attached, the suggestion that the mother would wish to continue to provide London accommodation for everyone else in her family to use except her only son, the debtor, was manifestly incredible (see [117] of the judgment).

Overall, the evidence, as a whole, strongly supported the conclusion that the debtor had, at all material times (including the relevant period), had continuing permission to use York House as his personal place of residence when in London, subject only to checking availability and making arrangements to pick up the keys (see [106], [123] of the judgment).

Four Seasons Holdings Incorporated v Brownlie and another case. [2017] UKSC 80, [2018] 2 All ER 91, [2018] 1 WLR 192, [2018] 2 LRC 693, [2017] All ER (D) 102 (Dec) applied

Lakatamia Shipping Co Ltd v Su [2021] EWHC 1866 (Ch), [2022] BPIR 181 adopted

Levene v IRC [1928] AC 217, [1928] All ER Rep 746 considered

Brauch (a debtor), Re, ex p Britannic Securities and Investments Ltd [1978] Ch 316, [1978] 1 All ER 1004, [1977] 3 WLR 354 considered

Dubai Bank Ltd v Fouad Haji Abbas and Another [1996] Lexis Citation 5394 considered

Skjevesland v Geveren Trading [2002] EWHC 2898 (Ch), [2003] All ER (D) 61 (May) considered

Coyne v DRC Distribution Ltd [2008] EWCA Civ 488, [2008] All ER (D) 193 (May) considered

Revenue and Customs Comrs v Grace [2009] EWCA Civ 1082, [2009] STC 2707, [2009] All ER (D) 280 (Oct) considered

Re Khan; Reynold Porter Chamberlain LLP v Khan [2016] Lexis Citation 9, [2016] All ER (D) 92 (Feb) considered

Marashen Ltd v Kenvett Ltd [2017] EWHC 1706 (Ch), [2018] 1 WLR 288, [2017] All ER (D) 107 (Jul) considered

Kaefer Aislamientos SA de CV v AMS Drilling Mexico SA de CV and others [2019] EWCA Civ 10, [2019] 3 All ER 979, [2019] 1 WLR 3514, [2019] All ER (D) 125 (Jan) considered

PJSC VTB Bank v Laptev [2020] EWHC 321 (Ch), [2020] BPIR 624, [2020] All ER (D) 71 (Mar) considered

Al Saud v Mobile Telecommunications Company KSCP [2022] EWHC 744 (Ch), [2022] All ER (D) 09 (Apr) considered

Hopes (Heathrow) Ltd, Re, Secretary of State for Trade and Industry v Dyer [2001] 1 BCLC 575, [2000] Lexis Citation 3313 adopted

Judgment date
18 May 2023

Judge
ICC Judge Barber (Chancery Division)

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Representation
John Wardell KC and Andrew Shaw (instructed by Millbank Solicitors) for the debtor.
Stephen Moverley Smith KC (instructed by Pillsbury Winthrop Shaw Pittman LLP) for MTC.

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