Lexis®Nexis Case Summaries

Re Radeva (in bankruptcy); Kooter v Official Receiver and others

[2022] EWHC 2638 (Ch), [2022] All ER (D) 35 (Nov)

The Chancery Division allowed the applicant's application to set aside a bankruptcy order relating to the second respondent (R). The court held that, at the relevant time, R's COMI had been in Bulgaria and not in England and Wales. Therefore, the bankruptcy order would be set aside as of right.

Catchwords

BANKRUPTCY – ANNULMENT– CENTRE OF MAIN INTEREST

Background

In March 2019, a bankruptcy order was made by the adjudicator, on the application of the second respondent debtor (R).

Trustees in bankruptcy were appointed on 2 July. Later in July, the applicant (K) issued an application seeking the annulment of the bankruptcy of R. K was a substantial judgment creditor of R and made his application essentially as the only known substantial creditor with a debt in the value of £206,000. That was around 99.5% of the overall total of creditors. The application to annul was made pursuant to s 282(1)(a) of the Insolvency Act 1986 (IA 1986).

Issues and decisions

(1) Whether the centre of main interest (COMI) of R had not been in England and Wales at the time that the bankruptcy order had been made (lack of jurisdiction). There appeared be no dispute that R's original habitual residence was Bulgaria.

The evidence filed in opposition to the annulment application did not establish that during the period before her bankruptcy and/or at the date of her bankruptcy, she had been involved in any business or profession (see [25] of the judgment).

Accordingly, the relevant test was one of habitual residence as a rebuttable presumption. The emphasis on the creditors was therefore different. For the purposes of habitual residence, the types of creditors would be those relating to her residency rather than creditors arising from any trade or profession (see [26] of the judgment).

There was a lack of evidence to suggest that R had obtained her university education in the UK (see [28] of the judgment).

There was no evidence of any security of tenure in relation to the property in Essex where R claimed to live. There was no evidence of tenancy agreement, licence or in fact of any sums being paid by R. That was an important factor. Having determined that R's evidence did not show that she carried out either a business or profession in the UK, or exercised any economic activity in the UK, there was no need to consider the various addresses that she had used (see [31] of the judgment).

There was clear evidence that R maintained strong family ties with her family in Bulgaria and in particular, her parents. There was evidence of real estate holdings of R in Bulgaria. A property which was in the name of R had been transferred in 2018 to her mother. The transfers and dealings between R and her parents were evidence of strong ties to Bulgaria, in dealing with assets and property, which went beyond simply visiting close family (see [32] of the judgment).

The evidence demonstrated connections with Bulgaria and that those connections could well be related to employment or a profession. It was also significant that, in the register of permanent residence in Bulgaria, R had changed her address from one in Troyan to an address in Sofia. A change of her Bulgarian address from Troyan to Sofia was a conscious move by R. That information was available for creditors, like K. It was a matter of public record. She had given an address in Sofia in court proceedings in 2018-2019 (see [33], [34], [36] of the judgment).

On the evidence, her habitual residence had remained in Bulgaria. That demonstrated an attempt by her to create an illusion of habitual residence in England and Wales. Her evidence failed to deal with the close and strong ties she had in Bulgaria. At the time that R had sought to apply for a bankruptcy order, the court had lacked jurisdiction to make such an order by reason of her COMI being in Bulgaria (see [37] of the judgment).

At the relevant time, R's COMI had been in Bulgaria and not in England and Wales. Therefore, the bankruptcy order would be set aside as of right (see [38] of the judgment).

Munks v Munks [1985] FLR 576, [1985] Fam Law 131 considered

Shierson v Vlieland-Boddy [2005] All ER (D) 391 (Jul), [2005] EWCA Civ 974 considered

Paulin v Paulin [2009] EWCA Civ 221 (Civ) considered

Sparkasse Hilden Ratingen Verlbert v Benk [2012] All ER (D) 88 (Sep), [2012] EWHC 2432 (Ch) considered

JSC Bank of Moscow v Kekhman and others [2015] All ER (D) 288 (Feb), [2015] 2 All ER (Comm) 1080, [2015] EWHC 396 (Ch) considered

Decker v Hopcraft [2015] EWHC 1170 (QB), [2015] All ER (D) 47 (May) considered

Raiffeisenlandesbank Oberosterreich AG v Meyben [2016] BPIR 697, [2016] EWHC 414 (Ch) considered

Deutsche Apotheker-Und Arztebank EG v Leitzbach and Another [2018] All ER (D) 166 (May), [2018] EWHC 1544 (Ch) considered

Die Spakrasse Bremen AG v Mehmet Armutcu [2021] EWHC 4026 (Ch) considered

Application allowed.

Judgment date
24 October 2022

Judge
Judge Agnello QC (Chancery Division Court)

Representation
Kamen Shoylev (Direct Access) for R.
The respondents did not appear and were not represented.