Neutral Citation Number: [2022] EWCA Civ 35

Case Nos: A2/2021/1509
A2/2021/1531

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD) & INSOLVENCY AND COMPANIES LIST (ChD)
Mr Justice Snowden
[2021] EWHC 2281 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/01/2022

Before :

LORD JUSTICE NEWEY
LORD JUSTICE ARNOLD
and
LORD JUSTICE STUART-SMITH

- -

Between:

LYUBOV ANDREEVNA KIREEVA (as bankruptcy trustee of Georgy Ivanovich Bedzhamov)	**Applicant/ Respondent**
- and -	
GEORGY IVANOVICH BEDZHAMOV	**Respondent/ Appellant**
And between:	
VNESHPROMBANK LLC	**Claimant**
- and -	
(1) GEORGY IVANOVICH BEDZHAMOV	**Defendant/ Respondent**
(2) UNIFLEET TECHNOLOGY LIMITED	**Defendants**
(3) BASEL PROPERTIES LIMITED	
- and -	
BASEL PROPERTIES LIMITED	**Non-Cause of Action Defendant**
- and –	
LYUBOV ANDREEVNA KIREEVA (as bankruptcy trustee of Georgy Ivanovich Bedzhamov)	**Applicant/ Appellant**

- -
- -

Mr Stephen Davies QC and Mr William Willson (instructed by **DCQ Legal**) for **Ms Kireeva**
Mr Justin Fenwick QC and Mr Stephen Robins (instructed by **Mishcon de Reya LLP**) for **Mr Bedzhamov**

Hearing dates: 24 & 25 November 2021

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and released to BAILII. The date and time for hand-down is deemed to be on Friday 21 January 2022 at 10:30am

Lord Justice Newey:

1. This case involves appeals by both Mr Georgy Bedzhamov and Ms Lyubov Kireeva against a judgment given by Snowden J (as he then was) ("the Judge") on 13 August 2021. The key issues are whether the Judge was right, first, to recognise a Russian bankruptcy order made in respect of Mr Bedzhamov and, secondly, to decline to grant assistance to Ms Kireeva, as Mr Bedzhamov's receiver under the Russian order, in relation to property in London.

Basic facts

2. On 23 October 2015, VTB 24 Bank ("VTB 24") made a loan to Mr Bedzhamov's sister, Ms Larissa Markus. Ms Markus having failed to meet her obligations in respect of the loan, VTB 24 brought a claim against Mr Bedzhamov on the footing that he had given a limited personal guarantee for his sister. Mr Bedzhamov denied signing the document, but the Meshanskiy District Court of Moscow rejected that contention and, on 22 December 2016, gave judgment in VTB 24's favour ("the VTB 24 Judgment").

3. By then, Vneshprombank LLC ("VPB"), of which Ms Markus had previously been president, had also obtained a judgment against Mr Bedzhamov. On 20 June 2016, VPB, which had been declared bankrupt earlier in the year, instituted a claim against Mr Bedzhamov in the Khamovniki District Court of Moscow seeking the rouble equivalent of upwards of £30 million for unjust enrichment, and on 16 August 2016 judgment was entered against him ("the VPB Judgment"). Mr Bedzhamov has since made numerous attempts to overturn the VPB Judgment, without success. It is nonetheless his position that the VPB Judgment was obtained improperly and is being maintained by fraud, namely, the wrongful suppression by VPB, at the instigation of its receiver and liquidator, the Deposit Insurance Agency ("the DIA"), of matters contained in a report prepared by the DIA ("the DIA Report").

4. VTB 24 and VPB each filed a bankruptcy petition against Mr Bedzhamov, and the two petitions were the subject of consideration by the Moscow Arbitrazh Court on 20 September 2017. The Court accepted VTB 24's petition and, as a result, ordered a debt restructuring procedure to be introduced in respect of Mr Bedzhamov's debts. In January 2018, the Court accepted both VPB's claim and one advanced by the Federal Tax Service as claims in the bankruptcy, and on 17 June 2018 a meeting of creditors resolved to petition for the bankruptcy to move to a second stage, in which the debtor is declared bankrupt and a receiver (the Russian equivalent of a trustee in bankruptcy) is appointed to realise the debtor's assets. The petition was heard by the Arbitrazh Court on 2 July 2018. The Court declared Mr Bedzhamov bankrupt and approved Ms Kireeva as his receiver.

5. At the time of the hearings before the Judge and us, three creditors had been recorded in relation to Mr Bedzhamov's bankruptcy: VPB in respect of the VPB Judgment for the sum of RUB 3,106,832,768.29 plus interest and surcharges, VTB 24 in respect of the VTB 24 Judgment for the sum of RUB 225,260,028.42 plus interest and surcharges, and the Federal Tax Service of Russia for the sum of RUB 174,750 plus interest and surcharges.

6. By the time he was declared bankrupt, however, Mr Bedzhamov was no longer in Russia. He appears to have left the country at the end of 2015 and to have been living

in England, where he is now domiciled, since at least 2017. In that same year, his sister was sentenced to a term of imprisonment in Russia having pleaded "no contest" to fraud charges, and he has himself been the subject of Russian criminal proceedings since early 2016.

7. At the end of 2018, VPB issued proceedings against Mr Bedzhamov in this country ("the UK Proceedings"). On 27 March 2019, VPB applied for, and was granted, a worldwide freezing order against Mr Bedzhamov restraining him from disposing of assets up to the value of £1.34 billion. The freezing order was continued on 10 April 2019 and, subject to certain variations, remains in force.

8. It is VPB's case in that litigation that it is the victim of a substantial fraud perpetrated by Mr Bedzhamov and his sister. As Males LJ explained when giving a judgment relating to the freezing order:

> "In outline, VPB says that there were four categories of wrongdoing, in each of which Mr Bedzhamov was complicit. These were (1) causing VPB to enter into purported loan agreements with actual customers of the bank of which those customers were ignorant, enabling the funds thus advanced to be misappropriated, (2) diverting funds from accounts held by genuine customers of the bank, (3) causing VPB to enter into loan agreements with shell companies which never had any prospect of repaying the funds advanced, and (4) making fictitious credits to accounts of companies controlled by the conspirators which were then used to discharge genuine debts owed by them to VPB or third parties."

(See [2019] EWCA Civ 1992, at paragraph 11.)

9. VPB has not sought recognition in this jurisdiction of the VPB Judgment. Mr Steven Philippsohn referred in an affidavit he swore in support of the application for the freezing order to an inconsistency between what had been said in the DIA Report and the case which VPB had put forward in the Russian proceedings. Mr Philippsohn provided an explanation, but noted that Mr Bedzhamov might claim that VPB had been prepared to advance a case which it knew to be false.

10. Mr Philippsohn also dealt in his affidavit with the relationship between the UK Proceedings and the Russian bankruptcy. He observed that, "as matters presently stand, the prospect of Ms Kireeva seeking the recognition of [Mr Bedzhamov's] bankruptcy in this jurisdiction appears to be very low indeed", noting that Ms Kireeva had confirmed to VPB in a letter dated 18 March 2019 that, by reason of lack of funds, she was not able to initiate any legal proceedings abroad, including in the United Kingdom. Mr Philippsohn further said this:

> "476. However, even if [Mr Bedzhamov's] bankruptcy were recognised in this jurisdiction, that would not affect his liability to VPB. On the contrary, upon completion of the Russian bankruptcy proceedings, … [Mr Bedzhamov] would remain liable to VPB under articles 53.1(3) and

> 1064 of the RCC [i.e. the Russian Civil Code], and would not be discharged from that liability … :
>
> (1) The starting point is that by reason of Article 213.28(3) of the Insolvency Law, after completion of the payment of creditors and the sale of property stage of bankruptcy … , a bankrupt is discharged from further satisfying his creditors' claims in the bankruptcy.
>
> (2) However, even after completion of that stage of the bankruptcy, certain liabilities will remain undischarged. Pursuant to Art. 213.28(5) and (6) of the Insolvency Law, this includes liabilities under articles 51.3(3) (i.e., controlling person liability) and 1064 (i.e., tort liability) of the RCC.
>
> 477. Accordingly, as a matter of Russian law, [Mr Bedzhamov] will not – upon the completion of the relevant stage of his Russian bankruptcy – be released from his liabilities to the Bank under Articles 51.3(3) and/or 1064 of the RCC; and this bankruptcy would not prevent [Mr Bedzhamov] from pursuing such claims against him in these proceedings.
>
> 478. Further, the Bank is content to undertake to the Court to inform Ms Kireeva of any relief granted pursuant to this Application, so that she might make any representations she considers appropriate … at the return date."

11. On 19 February 2021, Ms Kireeva issued an application by which she sought the recognition at common law of the Russian bankruptcy order against Mr Bedzhamov and of herself as Mr Bedzhamov's bankruptcy trustee and, further, "orders for the entrustment of the Belgrave Square Property (and any other property of [Mr Bedzhamov] in England) and that the Applicant will be able to question [Mr Bedzhamov] in relation to the Belgrave Square Property". The "Belgrave Square Property" comprises 17 Belgrave Square and 17 Belgrave Mews in London. Ms Kireeva said in an affidavit she swore in support of her application that the Belgrave Square Property could be the largest asset in Mr Bedzhamov's bankruptcy.

12. As to the background to her application, Ms Kireeva said this in her affidavit:

> "Around 27-28 January 2021, it was reported in the news that on 21 January 2021 the Tverskoy District Court of Moscow ordered the seizure of the Belgrave Square Property. I have seen the Russian news and have also been informed by my English lawyers that it has been reported in the English-language press …. I have been provided … with a copy of the decision of the Tverskoy District Court … , which found as follows … :
>
> '*The investigation has found that during the period 2009 to 2015 G I Bedzhamov acting together with L I Markus….and other*

> *persons as part of an organised group committed the theft of funds from Vneshprombank LLC by issuing deliberately bad loans to the bank clients without their knowledge and writing off funds from their accounts…..which caused Vneshprombank LLC damage on an especially large scale for a total amount of over 113 billion roubles*'."

Ms Kireeva went on to explain that, after learning of the seizure of the Belgrave Square Property, she had asked VPB whether it was interested in funding proceedings on her part; that VPB had referred her to A1 LLC ("A1"), the funder of the UK Proceedings; and that A1 had agreed to fund her application as well.

13. On 22 February 2021, Mr Bedzhamov issued an application in the UK Proceedings for an order varying the freezing order against him so as to allow him to sell the Belgrave Square Property. The purpose was to obtain funds from which Mr Bedzhamov could pay certain accrued and anticipated living expenses, legal fees and other disbursements.

14. Mr Bedzhamov's application came before Falk J on 5 March 2021. Although Ms Kireeva was not a party to the UK Proceedings, Mr Stephen Davies QC was permitted to make submissions on her behalf. In the light of evidence of urgency, Falk J declined to adjourn Mr Bedzhamov's application and proceeded to make an order along the lines he had sought, but she gave Ms Kireeva permission to apply to set aside her order under CPR 40.9. Falk J further directed that there should be an expedited one-day hearing of the recognition application in the first week of the Easter term and that Mr Bedzhamov should file and serve his evidence in response to it by 22 March.

15. On 16 March 2021, Ms Kireeva duly issued an application to set aside Falk J's order, and the Judge had both that application and that for recognition before him on 14, 16 and 19 April. In the course of the hearing, the Judge asked about the relationship between the UK Proceedings and the Russian bankruptcy. That prompted solicitors acting for VPB to send a letter to the Court in which they said:

> "We understand … that a particular point has been raised during the hearing … relating to the treatment of any proceeds recovered by our client in Claim No. BL-2018-002691 [i.e. the UK Proceedings], and that the Court wishes to understand our client's position on this point.
>
> Our client's position is that in accordance with Russian law it is obliged to remit any sums recovered following judgment in the above claim to Mr Bedzhamov's trustee in bankruptcy or to distribute the sums amongst the creditors in accordance with the trustee's instructions, and intends to do so."

16. Giving judgment on 13 August 2021, the Judge concluded that the Russian bankruptcy and Ms Kireeva's appointment should be recognised, but that the recognition application should be dismissed in so far as it sought assistance in relation to the Belgrave Square Property, and so too should the set aside application.

17. Ms Kireeva and Mr Bedzhamov have each appealed. Mr Bedzhamov challenges the decision to recognise the Russian bankruptcy and Ms Kireeva's appointment ("the

Recognition Appeal"); Ms Kireeva takes issue with the Judge's refusal to grant relief in respect of the Belgrave Square Property and to dismiss her application to set aside Falk J's order (respectively "the Immovables Appeal" and "the Set Aside Appeal"). Permission to appeal was granted by the Judge.

18. The UK Proceedings were due to come on for trial at the beginning of 2022 with a time estimate of 40 days. Having regard, however, to the present appeals, the trial has been postponed.

International assistance in bankruptcy matters

19. In *Rubin v Eurofinance SA* [2012] UKSC 46, [2013] 1 AC 236 ("*Rubin*"), Lord Collins noted at paragraph 25 that there were "four main methods under English law for assisting insolvency proceedings in other jurisdictions". With the United Kingdom's withdrawal from the European Union, one of the methods Lord Collins identified has ceased to be available: Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings ("the Insolvency Regulation") and its successor, Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) ("the Recast Insolvency Regulation"), are no longer applicable. The remaining ways in which a foreign office-holder can obtain help from an English Court are (i) pursuant to section 426 of the Insolvency Act 1986 ("the 1986 Act"), (ii) under the Cross-Border Insolvency Regulations 2006 ("the CBIR") and (iii) at common law.

20. There is no question of either section 426 of the 1986 Act or the CBIR being applicable in the present case, but it is still relevant to say something about them. The former, section 426, authorises the English Court to assist a foreign Court having insolvency jurisdiction and to apply, at the request of such a foreign Court, "the insolvency law which is applicable by either court in relation to comparable matters falling within its jurisdiction". Thus, section 426 provides:

> "(4) The courts having jurisdiction in relation to insolvency law in any part of the United Kingdom shall assist the courts having the corresponding jurisdiction in any other part of the United Kingdom or any relevant country or territory.
>
> (5) For the purposes of subsection (4) a request made to a court in any part of the United Kingdom by a court in any other part of the United Kingdom or in a relevant country or territory is authority for the court to which the request is made to apply, in relation to any matters specified in the request, the insolvency law which is applicable by either court in relation to comparable matters falling within its jurisdiction. In exercising its discretion under this subsection, a court shall have regard in particular to the rules of private international law.
>
> …
>
> (10) In this section '*insolvency law*' means—

> (a) in relation to England and Wales, provision extending to England and Wales and made by or under this Act or sections 1A, 6 to 10, 12 to 15, 19(c) and 20 (with Schedule 1) of the Company Directors Disqualification Act 1986 and sections 1 to 17 of that Act as they apply for the purposes of those provisions of that Act;
>
> …
>
> (d) in relation to any relevant country or territory, so much of the law of that country or territory as corresponds to provisions falling within any of the foregoing paragraphs;
>
> and references in this subsection to any enactment include, in relation to any time before the coming into force of that enactment the corresponding enactment in force at that time."

21. Comparable provisions were to be found in the Bankruptcy Act 1869, the Bankruptcy Act 1883 and the Bankruptcy Act 1914. Section 74 of the 1869 Act provided:

> "The London Bankruptcy Court, the local Bankruptcy Court, the Courts having jurisdiction in bankruptcy in Scotland and Ireland, and every British Court elsewhere having jurisdiction in bankruptcy or insolvency, and the officers of such Courts respectively, shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy, and an order of the Court seeking aid, together with a request to another of the said Courts, shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by such order, the like jurisdiction which the Court which made the request, as well as the court to which the request is made, could exercise in regard to similar matters within their respective jurisdiction."

Section 118 of the 1883 Act and section 122 of the 1914 Act were in very similar terms.

22. However, section 426 of the 1986 Act does not apply universally but only in relation to Courts elsewhere in the United Kingdom or in a "relevant country or territory". "Relevant country or territory" is defined in section 426(11) to refer to the Channel Islands, the Isle of Man and "any country or territory designated for the purposes of this section by the Secretary of State by order made by statutory instrument". All the countries which have been so designated share a common legal tradition with England and so do not include Russia. Ms Kireeva cannot, therefore, invoke section 426 in the present case.

23. With regard to the CBIR, these provide for the UNCITRAL Model Law to have the force of law in Great Britain. The Model Law allows foreign Courts and office-holders to obtain relief in this jurisdiction on an extensive basis. Among other things, a "foreign representative" may apply to the Court for recognition of the "foreign proceeding" in which the foreign representative has been appointed and, upon recognition, the Court's powers include "entrusting the administration or realisation of all or part of the debtor's assets located in Great Britain to the foreign representative or another person designated

by the court" (article 21(1)(e)) and "granting any additional relief that may be available to a British insolvency officeholder under the law of Great Britain, including any relief provided under paragraph 43 of Schedule B1 to the Insolvency Act 1986" (article 21(1)(g)). Such relief is, however, available only in relation to a "foreign main proceeding" or a "foreign non-main proceeding", and for a foreign proceeding to be either of these the debtor must have either the "centre of his main interests" (or "COMI") or an establishment in the country in which the foreign representative has been appointed (see the definitions in article 2 and article 17(2)). As a result, the CBIR are of no help to Ms Kireeva in the present context. In that connection, the Judge said in paragraph 110 of his judgment:

> "In the present case it is common ground that Mr Bedzhamov has neither his COMI nor any form of 'establishment' in Russia (to the extent that latter concept is meaningful as applied to an individual). This is because Mr Bedzhamov left Russia in December 2015 to live in Monaco and then settled in London (where he continues to live today). Recognition and assistance under the CBIR is therefore not available to the Trustee."

24. Aside from section 426 of the 1986 Act and the CBIR, foreign bankruptcy proceedings can be recognised at common law if the bankrupt was domiciled in the country in question or submitted to the jurisdiction of the country's Court. In such a case, movables of the bankrupt which are in England will be considered to have been assigned to the trustee or other representative of creditors if the foreign law so provides. Assistance may also be available from the English Court in other ways.

25. However, as discussed later in this judgment, movable property falls to be distinguished from immovable property, which, if situated in England, will not automatically vest in a foreign office-holder even if the foreign law provides for that. Further, the recognition of a foreign bankruptcy order can be opposed on, among others, the ground of fraud. As is explained in *Dicey, Morris & Collins on the Conflict of Laws*, 15th ed., at Rule 50, "[a] foreign judgment relied upon as such in proceedings in England, is impeachable for fraud" and "[s]uch fraud may be either (1) fraud on the part of the party in whose favour the judgment is given; or (2) fraud on the part of the court pronouncing the judgment". In the present case, Mr Bedzhamov contends that the Court should decline to recognise the Russian bankruptcy proceedings on the ground that the debt on which the petition which led to the bankruptcy order was founded was based on fraud.

The Recognition Appeal

The hearing before the Judge and his judgment

26. It was common ground before the Judge that, Mr Bedzhamov no longer being domiciled in Russia, the Russian bankruptcy order could be recognised only if he had submitted to the jurisdiction of the relevant Russian Court. Ms Kireeva contended that he had, by appearing at various hearings before the Arbitrazh Court through his legal adviser in Russia, Mr Sergey Belchich. The Judge agreed, concluding in paragraph 130 of his judgment that "the appearances of Mr Bedzhamov (through his representative, Mr Belchich) amounted to a submission to the jurisdiction of the Arbitrazh court having control of the bankruptcy proceedings in Russia", and there is no appeal against that finding.

27. The Judge then turned to consider Mr Bedzhamov's contention that recognition should be refused on grounds of fraud, breach of natural justice and public policy. In that connection, Mr Bedzhamov's skeleton argument for the hearing before the Judge asserted that there was "cogent and uncontroverted evidence that the principal creditor's [i.e. VPB's] claim is tainted by fraud" and the evidence included "complex details of the allegations and counter-allegations in respect of the [VPB Judgment]" (to quote from paragraph 181 of the judgment). In his oral submissions, however, Mr Justin Fenwick QC, Mr Bedzhamov's leading counsel, also submitted that the personal guarantee on which the VTB 24 Judgment was founded "was fraudulent on the basis that it contained a forged signature of Mr Bedzhamov" (see paragraph 160 of the judgment). Towards the end of the second day of the three-day hearing, the Judge pointed out that there was no direct evidence from Mr Bedzhamov supporting that case, but by the start of the third day Mr Bedzhamov had made a witness statement addressing the point, and no objection was taken to the admission of that evidence.

28. The Judge nonetheless said in paragraph 176 of his judgment that he had "conclude[d] that Mr Bedzhamov [had] not established that recognition of the Bankruptcy Order made on VTB 24's petition should be barred on grounds of fraud or breach of natural justice". The Judge explained:

> "165. I do not accept that Mr Bedzhamov's evidence is sufficiently strong to demonstrate that any of the bars to common law recognition apply. I also do not accept that the question of recognition should be adjourned to await the outcome of the trial in the UK Proceedings at which (it was asserted by Mr Fenwick QC) these issues would be ventilated in evidence. This is for the following reasons.
>
> 166. First, as matters stand today, there is an unsatisfied judgment debt against Mr Bedzhamov which has not been overturned on appeal. The VTB 24 Judgment debt is the basis of the orders made against Mr Bedzhamov in the Russian bankruptcy proceedings. The bankruptcy petition of VTB 24 based upon that debt was accepted as reasonable by the Arbitrazh Court and that decision has not been overturned on appeal.
>
> 167. I accept that the fact that Mr Bedzhamov has been unable to establish fraud or breach of natural justice in Russia is not dispositive in this jurisdiction. However, I have no reason to conclude that the conduct of proceedings in Russia is per se contrary to natural justice, or that decisions of Russian courts are inherently unreliable. Indeed, that argument was not made by the parties in these proceedings. Accordingly, although foreign judgments are not afforded the same finality as domestic judgments, it seems to me that the various unsuccessful challenges made by Mr Bedzhamov in Russia are at least an appropriate starting point, and a

relevant factor, when assessing the allegations he now makes about the VTB 24 judgment debt.

168. Second, and equally importantly, I consider that the evidence which was adduced before me to impeach the VTB 24 Judgment debt is insufficient to establish fraud on the balance of probabilities. It will be recalled that Mr Bedzhamov does not deny that he mortgaged three properties to secure his sister's loan agreement with VTB 24. Although I accept that a mortgage and a personal guarantee are different legal documents giving rise to different legal relationships, there is nothing inherently unusual in a person who charges property to support a loan to a third party borrower also providing a personal guarantee. Nor does Mr Bedzhamov explain why he would not have been willing to provide such guarantee in addition to providing mortgage security for the loan to his sister.

169. Mr Bedzhamov also does not offer any real explanation as to why or how his signature on the guarantee might have been forged (presumably with the connivance of VTB 24) other than to assert that it is part of the campaign against him and his family by the DIA, and to suggest that it was used by the DIA as a back-up to the Bank's petition since the Bank's Unjust Enrichment Claim was under appeal.

170. Third, although Mr Bedzhamov contends that it is 'clear on its face' that the signature on the personal guarantee is 'markedly different' from his authentic signatures from the time, I do not agree. Mr Bedzhamov has produced two personal guarantees executed at about the same time as the alleged personal guarantee in favour of VTB24. My (inexpert) eye cannot detect that the short-hand/initials on those documents are obviously in different hands.

171. In that regard, Mr Bedzhamov also contends that I should place no weight on the fact that he has been unable to produce an expert report opining on the validity of his signature. He attributes the lack of such a report to a lack of funds, but gives no explanation for that. That is surprising, since the VTB 24 Judgment was given in December 2016, almost two and a half years before the WFO. At that time it must have been apparent to Mr Bedzhamov (or his advisers), that if he had not signed the personal guarantee, he needed to obtain expert evidence to support that contention. This was also a time at which, as described in the Court of Appeal judgment to which I have referred, Mr Bedzhamov had

> no restrictions on his expenditure and, by all accounts lived a lavish lifestyle, spending sums which would have been more than adequate to pay for a report from a handwriting expert.
>
> 172. Mr Belchich's evidence is that the Russian court hearing VTB 24's claim in 2016 required Mr Bedzhamov to attend in person to have his signature examined. Mr Belchich and Mr Bedzhamov say that Mr Bedzhamov was (and is) unable to do so for fear of detention and imprisonment (and the consequences for his health) if he returned to Russia. Whether Mr Bedzhamov's fears of the consequences of returning to Russia are well founded, and indeed whether the criminal proceedings against him which give rise to such fear are, or are not, well-founded, are matters which I cannot possibly determine on this application. But whatever the position in that regard, it does not explain why no expert evidence has been provided to this court to support Mr Bedzhamov's contentions, especially given the extensive other evidence produced in the UK Proceedings."

29. Having arrived at these conclusions, the Judge understandably saw no need to explore the rival contentions in respect of the VPB Judgment and said in paragraph 185 of his judgment:

> "I therefore conclude that the Bankruptcy Order made in Russia against Mr Bedzhamov should be recognised in this jurisdiction – at least to the extent that the English court should acknowledge its existence and the status of the Trustee."

The parties' cases in outline

30. The thrust of Mr Bedzhamov's submissions in relation to the VTB 24 Judgment was that the Judge had not been entitled to discount without cross-examination the account given in his witness statement. Mr Fenwick, once again appearing for Mr Bedzhamov with Mr Stephen Robins, argued that what the Judge ought to have done was give directions for the issues to be determined with the benefit of appropriate disclosure and oral evidence. The question for the Judge was not whether "the evidence which was adduced … to impeach the VTB 24 Judgment is insufficient to establish fraud on the balance of probabilities", but whether Mr Bedzhamov's witness statement could be rejected as incredible, which it could not. Mr Fenwick accepted that his skeleton argument for the hearing before the Judge had not included an express allegation that the VTB 24 Judgment could be impeached for fraud, but he said that the focus had been on the proposed sale of the Belgrave Square Property, that there had been limited time to prepare for what was an expedited hearing and that by this time the funds available to Mr Bedzhamov had run out. Mr Fenwick attributed the absence of expert handwriting evidence to a "combination of funds, time and concentration on Belgrave Square" and said that there had been no need to obtain an expert report "until the trustee surfaced" as "Mr Bedzhamov wasn't in Russia, all his Russian assets have been expropriated by

the Russian state or seized by the trustee, and what he's been focusing on is the VPB claim".

31. For his part, Mr Davies, appearing for Ms Kireeva with Mr William Willson, submitted that the Judge had been entitled to say "enough is enough" and to attach no weight at all to Mr Bedzhamov's witness statement. The circumstances in which the statement was produced were highly relevant and, having regard to them, the statement was simply not credible. Notwitstanding the accelerated timetable, Mr Bedzhamov had succeeded in putting in lengthy evidence in opposition to the recognition application which, however, had not included anything from Mr Bedzhamov himself or a denial that he had signed the guarantee on which VTB 24 relied. As for the absence of expert evidence, Mr Davies said that in March 2021 Mr Bedzhamov had borrowed some £128,000 and used the money to pay his chauffeur, the nanny and for maintenance of his Bentley. The suggestion, Mr Davies said, that Mr Bedzhamov thought those items more important than instructing an expert was incredible. Mr Davies also pointed out that the loan agreement pursuant to which VTB 24 made the loan to Mr Bedzhamov's sister referred to him giving a guarantee.

32. In the course of his oral submissions, Mr Davies said:

> "it's a two-stage process. Does [Mr Bedzhamov's evidence] have any weight at all? If it does, does it satisfy the test which [the Judge] sets out in his judgment?"

33. In a note sent to the Court after the hearing, Mr Davies expressed concern that his reference to a "two-stage process" might not be properly understood without clarification and said that, even if the Judge should have accepted Mr Bedzhamov's evidence at face value, that evidence was in any event insufficient to create a bar to recognition of the VTB 24 Judgment or the Russian bankruptcy order because "there was no good arguable case on the evidence for establishing that a fraud had been procured *by VTB Bank* … or that there had been a breach of natural justice". In that connection, Mr Davies referred to a sentence in his skeleton argument in which he said "there was nothing to suggest that VTB 24 had itself been involved in any fraud – a crucial fact to establish and an unlikely one, given that it was advancing a loan on the express basis that guarantees from [Mr Bedzhamov] and his brother-in-law were required". The point was not developed further in the skeleton argument and I did not understand it to feature in Mr Davies' oral submissions, but I shall nonetheless return to it below.

The approach to be adopted to written evidence

34. Mr Fenwick cited a number of cases to show that there are only limited circumstances in which a Court can dismiss evidence given by affidavit or witness statement without the witness being cross-examined. The authorities to which he referred included *Re Lo-Line Electric Motors Ltd* [1988] Ch 477 at 487, *Re Keypak Homecare Ltd* [1990] BCLC 440 at 446, *Re a company (No 006685 of 1996)* [1997] 1 BCLC 639 at 648, *Re Hopes (Heathrow) Ltd* [2001] 1 BCLC 575 at 582, *Long v Farrer & Co* [2004] BPIR 1218 at paragraph 57, *Shierson v Vlieland-Boddy* [2005] EWCA Civ 974, [2005] 1 WLR 3966 at paragraph 56, *Coyne v DRC Distribution Ltd* [2008] EWCA 488, [2008] BCC 612 at paragraph 58, and *Re Burnden Group Ltd* [2017] EWHC 247 (Ch) at paragraph 2.14.

To my mind, however, it suffices to quote from *Coyne v DRC Distribution Ltd* [2008] EWCA Civ 488, [2008] BCC 612, where Rimer LJ accepted in paragraph 58:

> "it is well-settled practice that if a court finds itself faced with conflicting statements on affidavit evidence, it is usually in no position to resolve them, and to make findings as to the disputed facts, without first having the benefit of the cross-examination of the witnesses. Nor will it ordinarily attempt to do so. The basic principle is that, until there has been such cross-examination, it is ordinarily not possible for the court to disbelieve the word of the witness in his affidavit and it will not do so. This is not an inflexible principle: it may in certain circumstances be open to the court to reject an untested piece of such evidence on the basis that it is manifestly incredible, either because it is inherently so or because it is shown to be so by other facts that are admitted or by reliable documents …. [Counsel] said that these principles apply equally to the case in which the evidence is given by witness statement rather than by affidavit, and I agree. I said as much in my summary of the principles in *Long v. Farrer & Co and Farrer* [2004] EWHC 1774 (Ch); [2004] BPIR 1218, at paragraphs 57 to 61."

The present case

35. Mr Bedzhamov said the following in the witness statement he made on the eve of the final day of the hearing before the Judge:

> "7. The Purported Guarantee is relied on by Bank VTB24 and now by Ms Kireeva in order to state that I owe a debt to VTB24 which is more than the security that I pledged in respect of my sister's loan agreement with VTB24 dated 23 October 2015.
>
> 8. However, the signature on the Purported Guarantee … is not mine and I was unaware of the existence of the Purported Guarantee until VTB24's claim against me. As explained in his third witness statement in these proceedings, on my instructions, Mr Belchich sought to have the signature examined by a Russian court appointed expert but this was made impossible by the Russian court's requirement that I return to Russia, where I would be immediately detained pending a trial. I suffer from ischemic heart disease and have had bypass surgery in February 2016, a coronary artery bypass graft, and a stent inserted in May 2018, and have been diagnosed with Dressler's Syndrome which involves recurrent episodes of inflammation around my heart. Given my serious medical condition, I do not believe I would survive if returned to and imprisoned in Russia.

> 9. Due to lack of funds, I am not currently able to seek an expert report on the signature …. However, it is clear on its face that the signature is markedly different from my own ….
>
> 10. In addition, I note that I was flying to Italy in the afternoon of the day that the Purported Guarantee was allegedly signed, as demonstrated by the FSB Report exhibited to Mr Belchich's second witness statement dated 12 April 2021 …. In Russia, the signature of such documents must take place at the relevant bank's offices. While this does not definitively rule out the possibility that I could have attended VTB24's offices in the morning, I suggest that it is inherently unlikely I would have done so when preparing for an international flight."

36. As Mr Davies stressed, a number of matters may be said to cast doubt on Mr Bedzhamov's account. In the first place, it was given very late in the day. Mr Bedzhamov made his witness statement only during the hearing before the Judge and his denial that the signature on the VTB 24 guarantee was his was not clearly foreshadowed in either the other evidence filed in opposition to the recognition application or Mr Bedzhamov's skeleton argument for the hearing before the Judge. Secondly, Mr Bedzhamov has not obtained any expert handwriting evidence to support his version of events. In so far, moreover, as his failure to do so has been attributed to shortage of funds, his explanation is undermined by the fact that he was lent £128,000 in March 2021. Thirdly, there is no reason to think it inherently improbable that Mr Bedzhamov should have given the alleged guarantee. He accepts that he provided VTB 24 with security by giving a pledge over three plots of land in Moscow and, as the Judge said in paragraph 168 of his judgment, "there is nothing inherently unusual in a person who charges property to support a loan to a third party borrower also providing a personal guarantee".

37. On the other hand, Mr Bedzhamov had denied signing the VTB 24 guarantee long before he made his 18 April 2021 witness statement. In a witness statement made on 23 March 2021 in response to Ms Kireeva's application, Mr Belchich said that he had told the Arbitrazh Court at the hearing on 20 September 2017 that Mr Bedzhamov "did not provide a personal guarantee to VTB24 in respect of the loan agreement between VTB24 and [Ms Markus] and the document suggesting otherwise was a forgery". Returning to the subject in a witness statement of 18 April 2021 (which, like Mr Bedzhamov's, was filed mid-hearing), Mr Belchich said:

> "14. During the preparation for a hearing on 18 April 2016 regarding VTB24's claim in respect of the VTB24 Loan Agreement … , [Mr Bedzhamov's] instructions were that he did not sign the guarantee and that he was unaware of its existence until the preparation for the August 2016 Hearing. Those instructions have remained consistent to date. As can be seen from the case history obtained from the Moscow City Court website … , at the August 2016 Hearing, I made

> submissions in accordance with [Mr Bedzhamov's] instructions and requested that a court appointed handwriting expert be instructed to examine the guarantee. This is the standard procedure in Russia for dealing with allegedly forged documents, rather than the production of any form of witness evidence. In Russia, parties to proceedings may only make statements to the Court orally, or through a legal representative with a power of attorney (as in this case). The application was successful and the matter was adjourned until an examination of the signature had taken place.
>
> 15. However, in order for the examination to take place, the Russian court required [Mr Bedzhamov] to provide sample signatures in person at the court, as can be seen from the text of the judgment from the further hearing of the matter on 22 December 2016. That judgment (granting VTB24's claim) … states that '*G.I. Bedzhamov's statement about him not being a signatory to the guarantee agreement does not correspond to the factual circumstances of the case. In addition, G.I. Bedzhamov did not show up at the court hearing to take his specimen of handwriting for forensic handwriting exam without a valid excuse*'.
>
> 16. Clearly, the requirement that [Mr Bedzhamov] attend the Russian court in person could not have been complied with in circumstances where [Mr Bedzhamov] would have been immediately detained on his return to Russia …."

38. There might possibly have been scope for Ms Kireeva to object to the admission of the late witness statements from Mr Bedzhamov and Mr Belchich. That evidence having been admitted, however, what the Judge needed to ask himself was whether Mr Bedhzamov's evidence could be rejected without cross-examination because it was manifestly incredible. As I read his judgment, he did not in fact answer that question. He said that he did "not accept that Mr Bedzhamov's evidence is sufficiently strong to demonstrate that any of the bars to common law recognition apply" (paragraph 165 of the judgment) and that "the evidence which was adduced … to impeach the VTB 24 Judgment debt is insufficient to establish fraud on the balance of probabilities" (paragraph 168). However, the Judge was not entitled to dismiss Mr Bedzhamov's evidence "on the balance of probabilities". The real issue was whether Mr Bedzhamov's account was incredible and the Judge made no finding to that effect.

39. Nor, in my view, would we be justified in rejecting Mr Bedzhamov's evidence. There are plainly grounds for questioning what Mr Bedzhamov has said, but I do not think that this is a case in which a witness statement can be discounted without cross-examination. As I have said, it seems that Mr Bedzhamov has disputed signing the guarantee since 2016. Further, while there may be "nothing inherently unusual in a person who charges property to support a loan to a third party borrower also providing

a personal guarantee", it is also possible for someone to do no more than give security over particular property and explanations have been put forward for both the absence of expert evidence and the fact that the dispute about the signature on the VTB 24 guarantee had not been flagged in the evidence or skeleton argument filed on Mr Bedzhamov's behalf for the purposes of the hearing before Judge. In the circumstances, it appears to me that Mr Bedzhamov's evidence needs to be tested in cross-examination and cannot be discounted at this stage.

40. As I have mentioned, Mr Davies submitted that Mr Bedzhamov's evidence was insufficient to create a bar to recognition of the VTB 24 Judgment or the Russian bankruptcy order even if taken at face value because "there was no good arguable case on the evidence for establishing that a fraud had been procured *by VTB Bank*". However, Mr Davies did not put forward any case as to how or why Mr Bedzhamov's signature could have been forged without any complicity on the part of VTB 24, who it was stood to benefit from the guarantee. It appears to me that, supposing Mr Bedzhamov's signature to have been forged as he claims, the natural inference would be that VTB 24 was involved or at any rate that there was a good arguable case to that effect.

41. In the circumstances, it seems to me, with respect, that the Judge was wrong to hold the VTB 24 Judgment to be well-founded. It was not possible to arrive at that conclusion in the face of Mr Bedzhamov's witness statement when he had not been cross-examined on it, nor to dismiss the possibility of VTB 24 bearing responsibility for any fraud. Further, it not being suggested that the Judge's decision to recognise the Russian bankruptcy can be sustained on any other basis, that decision must, in my view, be set aside. That is not to say, however, that the recognition application falls to be dismissed. The correct course is, I think, to remit the matter to the High Court so that directions can be given for a hearing at which Mr Bedzhamov's evidence can be tested in cross-examination.

The Immovables Appeal

Introduction

42. Despite recognising the Russian bankruptcy, the Judge declined to grant Ms Kireeva any relief in respect of the Belgrave Square Property. He concluded in paragraph 268 of his judgment that, "although the Russian Bankruptcy Order should be recognised here, there is no common law power to 'entrust' the Belgrave Square Property to the Trustee" nor "a common law power to declare that it has vested in the Trustee or to order it to be transferred to the Trustee or sold by her or anyone else for her benefit". In paragraph 251, he had said:

> "it appears clear to me that there is no general power in the court at common law to make an order vesting the Belgrave Square Property in the Trustee, or ordering it to be transferred to the Trustee, or in some way conferring possession and control of the property on the Trustee. If and to the extent that *Re Kooperman* [(1928) 13 B&CR 49] might be thought to support a wider proposition, I do not regard it as a persuasive authority and I decline to follow it."

43. As the Judge recorded in paragraph 194 of his judgment, it appeared to be common ground before him that "if and to the extent Mr Bedzhamov has any moveable property situated in England, the consequence of granting recognition to the Trustee will be automatically to recognise that she is the owner of, and entitled to, Mr Bedzhamov's moveable property in England". However, the Judge considered there to be "clear authority for the proposition … that the making of a foreign bankruptcy order does not vest immovable property in England in the foreign trustee" (see paragraph 207 of the judgment), with the result that, while Ms Kireeva might have become the owner of the Belgrave Square Property in the eyes of Russian law, she has not done so as a matter of English law. It was submitted to the Judge that the Court's powers nonetheless extended to "ordering immovable assets to be vested in or transferred to the foreign office-holder, or sold by a receiver appointed by the court on the basis that the proceeds would be remitted to be dealt with in the foreign insolvency" (see paragraph 197), but he did not agree.

44. Before us, Mr Davies argued that recognition at common law serves as a gateway to the grant of relief pursuant to the Court's equitable jurisdiction or under section 37 of the Senior Courts Act 1981 in accordance with the principle of "modified universalism". Cases such as *Re Kooperman* (1928) 13 B&CR 49 and *Hughes v Hannover Ruckversicherungs-Aktiengesellschaft* [1997] 1 BCLC 497 ("*Hughes v Hannover*"), Mr Davies submitted, testify to the availability of such relief. In fact, while legal title to the Belgrave Square Property may not have transferred to her, Ms Kireeva's recognition means, so Mr Davies maintained, that Mr Kireeva is entitled to tell Mr Bedzhamov what to do with the property and that he is to be regarded as holding it for her. In the circumstances, Mr Davies said, a vesting order in favour of Ms Kireeva could be made under section 44 of the Trustee Act 1925, but on any view the Court could grant relief on Ms Kireeva's application "to restrain [Mr Bedzhamov] from dealing with the property or indeed to execute a transfer in [her] favour or in favour of a purchaser". Supposing, contrary to Ms Kireeva's case, that the Court could not otherwise grant her relief, the fact that it has personal jurisdiction over Mr Bedzhamov would allow it to do so.

45. In contrast, Mr Robins, who argued this part of the case for Mr Bedzhamov, submitted that the principle of private international law to which the parties have referred as the "immovables rule" has the consequence that, even if the Russian bankruptcy is recognised, Ms Kireeva can have no legally recognisable claim to, or interest in, the Belgrave Square Property and, as a result, cannot be granted relief in respect of it. *Re Kooperman* apart, the cases in which Courts have granted foreign office-holders remedies in relation to immovable property, Mr Robins argued, have involved the exercise of statutory powers which are not available in the present case, and the Judge was right to decline to follow *Re Kooperman*, an unsatisfactory decision. At common law, an English Court has no power to confiscate property from its owner or to vest it in someone with no legally recognised claim to, or interest in, it, such as Ms Kireeva.

46. The fact that, in my view, the Recognition Appeal should be allowed does not render the Immovables Appeal academic. Ms Kireeva's application for recognition will remain on foot.

The immovables rule

47. The "immovables rule" means that, as a matter of English law, a foreign Court has no jurisdiction to make orders in respect of land in England and rights relating to such land are governed exclusively by English law. Thus, *Dicey, Morris & Collins on the Conflict of Laws* states the following:

> *Rule 47(2)*
>
> "A court of a foreign country has no jurisdiction to adjudicate upon the title to, or the right to possession of, any immovable situate outside that country."
>
> *Rule 132*
>
> "All rights over, or in relation to, an immovable (land) are (subject to the Exception hereinafter mentioned) governed by the law of the country where the immovable is situate (*lex situs*)."

(The "Exception" is that Rule 132 does "not apply to the formal and material validity, interpretation and effect of a contract, and capacity to contract, with regard to an immovable": see paragraph 23E-080.)

48. The authorities cited in support of these propositions include *Nelson v Bridport* (1846) 8 Beav 547, *Bank of Africa Ltd v Cohen* [1909] 2 Ch 129 and *Re Hoyles* [1911] 1 Ch 179. In *Nelson v Bridport*, Lord Langdale MR said at 570 that "[t]he incidents to real estate, the right of alienating or limiting it, and the course of succession to it, depend entirely on the law of the country where the estate is situated". In *Bank of Africa Ltd v Cohen*, Kennedy LJ said at 145-146 that "it is a well-settled general rule of private international law … that in regard to immovable property the lex situs, or, as it is sometimes styled, the lex rei sitæ, prevails in regard to all rights, interests, and titles in and to such property". In *Re Hoyles*, Farwell LJ observed at 185-186 that "[n]o country can be expected to allow questions affecting its own land, or the extent and nature of the interests in its own land which should be regarded as immovable, to be determined otherwise than by its own Courts in accordance with its own interests".

49. Mr Robins took us to a number of authorities, drawn from a variety of jurisdictions, to illustrate the operation of the immovables rule in the context of insolvency. The earliest of them was *Osborn v Adams* (1836) 35 Mass 245, 18 Pick 245, a decision of the Massachusetts Supreme Judicial Court. There, an assignment of property by an insolvent debtor in Connecticut under a statute of that State was held to have no effect in relation to land in Massachusetts. Wilde J, delivering the judgment of the Court, said at 247:

> "As to the assignment under the statute of Connecticut, it is very clear, that [the debtor's] title to real estate within this Commonwealth could not pass thereby. The title and disposition of real estate is exclusively subject to the laws of the country where it is situated, which alone can prescribe the mode by which a title to it can pass. *M'Cormick* v. *Sullivant*, 10 Wheaton, 202. This statutory assignment, therefore, in regard to real estate

> situated in this Commonwealth, is merely void. It can neither pass a title, nor aid one otherwise defective."

50. *MacDonald v Georgian Bay Lumber Co* (1878) 2 SCR 364, a decision of the Supreme Court of Canada, is to similar effect. In that case, a firm carrying on business in New York had executed a deed to transfer all their assets to a trustee for creditors under the Bankruptcy Act of the United States. The deed was held to have had no effect as regards immovable property in Canada. Ritchie J explained at 376-377:

> "the principle is too well established to be now questioned, that real estate is exclusively subject to the laws of the government within whose territory it is situate. Mr. *Story* says, so firmly is this principle established, that in cases of bankruptcy, the real estate of a bankrupt, situate in a foreign country, is universally admitted not to pass under the assignment ….
>
> In sec. 425, after stating the principle as laid down by foreign Jurists, *Story* says:—
>
> > The universal consent of the tribunals, acting under the common law, both in *England* and in *America*, is, in a practical sense, absolutely uniform on the same subject. All the authorities in both countries, so far as they go, recognize the principle in its fullest import, that real estate or immoveable property is exclusively subject to the laws of the Government within whose territory it is situate."

51. *Waite v Bingley* (1882) 21 Ch D 674 provides an English illustration. That case involved a question as to whether the plaintiffs had inherited property in London from their father, whose estate had before his death been placed under sequestration for the benefit of creditors by an Australian Insolvency Court. Hall V-C held at 682 that "the property did not vest in the assignee under the Australian insolvency" and that "there is no impediment at all to the Plaintiffs' title by reason of their father's alleged insolvency".

52. A passage from the decision of the Privy Council in *Walker v Lundborg* [2008] UKPC 17 tells the same story. In that case, a Mr Walker, who had property in the Bahamas, was made bankrupt in Florida. Lord Walker, giving the Board's judgment, explained in paragraph 25:

> "In the Bahamas there are no statutory provisions for cross-border assistance in insolvency with an international element involving the United States. Under general principles of private international law one country will usually recognise the status of a trustee in bankruptcy (or similar officer) appointed by another country, and will also recognise his title to moveable (but not immoveable) property situated in the recognising country. Mr Walker's interest in the property was immoveable property. Even if under Florida bankruptcy law Mr Walker's world-wide estate, moveable and immoveable, vested in his trustee, courts in the Bahamas would not recognise the trustee's title to immoveable property within its jurisdiction."

Re Kooperman

53. A foreign trustee was, however, granted relief in *Re Kooperman*. In that case, a Belgian Court had declared Mr Kooperman bankrupt and directed the sale of a property in England. The trustee (or "Curateur") applied without notice for relief on the basis that:

> "The order of the Belgian Court cannot affect immovable property … situate in England … , but the English Court will assist the foreign trustee in a proper case by appointing a receiver to the English property."

The report records Astbury J's response as follows:

> "I make an order that Maitre Donnet be appointed without security receiver of the leasehold property in question with authority to sell and retain the proceeds as trustee."

54. *Re Kooperman* has been cited in a number of textbooks as showing that it is possible to "mitigate" or "side step" the immovables rule. Thus, *Dicey, Morris & Collins on the Conflict of Laws*, having stated in Rule 217 that, subject to the effect of the Insolvency Regulation, "an assignment of a bankrupt's property to the representative of his creditors, under the bankruptcy law of any foreign country, other than Scotland or Northern Ireland, is not, and does not operate as, an assignment of any immovables of the bankrupt situate in England", continues, "But in a proper case the English court may authorise the appointment of a receiver of the rents and profits of such immovables", and this is said in paragraph 31-084 with *Re Kooperman* cited as authority:

> "A foreign trustee who would otherwise be met by the obstacle contained in this Rule may be able to mitigate its effect if the English court, in a proper case, is prepared to appoint a receiver of the rents and profits of the immovables."

Likewise, *Totty. Moss & Segal: Insolvency* refers at paragraph E1-12 to the Court being able to "side step the general rule by appointing the foreign trustee or liquidator receiver of the debtor's property, both movable and immovable, and give him the power of sale". In a similar vein, Fletcher, *The Law of Insolvency*, 5th ed., says at paragraph 29-060:

> "in practice the English courts are likely to afford a foreign trustee a considerable degree of assistance in taking steps to obtain a vesting order in his favour, or to procure the formal conveyance to himself of the bankrupt's English immovable property. Indeed, the English court may empower the trustee to effect a sale of such property by formally appointing him a receiver of the bankrupt's property here, clothed with a power to sell the same and to deal with the proceeds in accordance with the provisions of the lex concursus."

55. However, *Bergerem v Marsh* (1921) 6 B&CR 195, the single authority identified as referred to in *Re Kooperman*, did not concern immovables. There, too, a Belgian trustee was granted relief in this jurisdiction, but only in relation to movable property. Bailhache J noted at 197 that "[t]he three most recent decisions all agree that, under

circumstances like this, the decree of a Court such as this does vest the personal property of a debtor, wherever that personal property may happen to be, and is not confined to personal property in the country in which the decree was made".

56. Since, moreover, *Re Kooperman* involved a without notice application and no reasoned judgment is recorded as having been given, the decision cannot of itself be of much weight. If it is to be followed, it must be because justification for doing so is to be found elsewhere.

Cases concerned with the grant of comparable relief

57. We were taken to various cases in which there has been reference to the grant of relief comparable to that given in *Re Kooperman*.

58. In *Re Levy's Trusts* (1885) 30 Ch D 199, real estate in England had been settled on Mr Levy for life or until, among other things, the rents should be forfeited. Mr Levy having been made bankrupt in New South Wales with the result, according to New South Wales legislation, that all his property, "wheresoever the same might be known or found", vested in the Chief Commissioner of Insolvent Estates, the question arose whether there had been a forfeiture. Kay J held that there had, explaining at 123-124:

> "The words 'wheresoever the same may be known or found' are wide enough to include the life interest in real estate in *England*, but it is quite obvious that the Act of the colonial Parliament does not vest real estate in *England* or real estate elsewhere than in the colony in the Chief Commissioner, or whoever occupies there the place of assignee in bankruptcy in this country. The English Act of Parliament which at that time applied to the case was the Bankruptcy Act, 1869, which contains a clause:—[His Lordship read sect. 74, and continued:—] From the facts before me I am bound to infer that if the Chief Commissioner, or the person who exercises the functions of what used to be called the official assignee in *England*, had applied to the Court of Bankruptcy in *England* for an order in aid of the bankruptcy in the colony, to enable the assignee to receive the rents and profits of the property of which *Samuel Levy* is tenant for life during the rest of the life of *Samuel Levy*, that order would have been made as a matter of course. Therefore, on his becoming bankrupt in *New South Wales*, the real estate in this country became liable at once, or rather would have so become liable if it had belonged to him indefeasibly for his life, to be attached and taken possession of by the proper authority in *New South Wales* for the purposes of his bankruptcy there."

Kay J thus considered that the Chief Commissioner could have obtained relief, not at common law, but pursuant to section 74 of the Bankruptcy Act 1869.

59. *Re Fogarty* [1904] QWN 67 also arose out of a New South Wales bankruptcy. In that case, a New South Wales Court requested assistance from a Queensland Court in respect of land in Queensland. The Queensland Court acceded to the request and made an order vesting the land in the official assignee of the bankrupt's estate. Once again,

however, the application was made pursuant to a statute, section 118 of the Bankruptcy Act 1883, not at common law.

60. In *Re Bolton* [1920] 2 IR 324, Mr Bolton had been made bankrupt in South Africa but held land in Ireland. A South African Court having requested assistance from the Irish Courts, the trustee applied for, and was granted, an order vesting the property in him under section 71 of the Bankruptcy Amendment (Ireland) Act 1872, which was in similar terms to section 74 of the Bankruptcy Act 1869. The case did not involve the grant of relief at common law.

61. *Re Bolton* was amongst the authorities cited in *Re Osborn* (1932) B&CR 189, where an Isle of Man Court sought assistance in relation to land in England owned by a person adjudicated bankrupt in the Isle of Man. Farwell J noted that he was being asked to make an order under section 122 of the Bankruptcy Act 1914, which had by now replaced section 74 of the Bankruptcy Act 1869. At 194, Farwell J said that he thought it "clear that I am bound in a proper case, under section 122, to assist the Court in the Isle of Man in the bankruptcy which is the bankruptcy under that jurisdiction", but he nevertheless doubted whether he could make a vesting order, explaining at 194-195:

> "The question of making either a vesting order or a declaration that the property in this country has vested in the trustee in bankruptcy in the Isle of Man, seems to me to be one of considerable difficulty. In my judgment, it is not possible for me to make a declaration that 'all the rights and interests of the above-mentioned bankrupt in the following property,' which includes freehold property, 'has vested in the trustee,' because I do not think it has. In my judgment, the effect of the order made in the Isle of Man does not *ipso facto* vest the assets in this country in the trustee, but if the trustee desires to get those assets vested in him, or to get control over them, his only course is the course which has been adopted in this case of coming to this Court and obtaining the aid of this Court to enable him to get the control and possession of the assets.
>
> With regard to making the vesting order, which seems to have been the course adopted in Ireland, the difficulty I feel as to that is, that so far as I know I have no jurisdiction to make an order of that sort at all under the Bankruptcy Act. Of course, I have jurisdiction in a proper case under the Trustee Act to make a vesting order, but what jurisdiction in bankruptcy I have to vest property in a trustee in bankruptcy in another country I do not know. The effect of an order of adjudication in this country is to vest *ipso facto* the property of the bankrupt in the trustee, but that does not give me any power to vest the property of the bankrupt in a trustee in a bankruptcy in another country, although it be a country which is part of the Empire. Therefore, there seems to me to be a grave difficulty, if not an impossibility, in my making a vesting order."

62. Asking himself whether there was any other alternative, Farwell J concluded that he could properly adopt the course which Astbury J had adopted in *Re Kooperman*. Farwell J said at 195-196:

> "That I have jurisdiction to appoint a receiver in bankruptcy there can be no doubt, and, fortified by the course which has been adopted by my predecessor, I think I am justified in adopting the same course."

Farwell J observed at 197 that he could not vest the property in the trustee or appoint him receiver of the immovable property, but could appoint him "receiver of the rents and profits of the freehold and leasehold property with liberty to sell".

63. Farwell J thus granted relief such as Astbury J had granted in *Re Kooperman*, but he did so pursuant to section 122 of the Bankruptcy Act 1914, not at common law.

64. In *Re Jackson* [1973] NI 67, an Irish Court had asked the Northern Ireland Court for assistance in relation to a person who had been adjudicated bankrupt in the Republic. Lowry LCJ concluded at 70 that the Court had "power under section 122 [of the Bankruptcy Act 1914] to act in aid of and be auxiliary to the High Court of the Republic in its bankruptcy jurisdiction". The decision casts no light on what can be done at common law.

65. In *Radich v Bank of New Zealand* [2000] BPIR 783, the Federal Court of Australia referred to the Court's ability to assist a foreign trustee under section 29 of the Australian Bankruptcy Act 1966. Thus, Drummond J said at 801-802:

> "It is well established that the assignment of all the bankrupt's property, real and personal and wherever situate, to the representative of his creditors which is effected by the foreign law upon the making of an adjudication by a foreign court having jurisdiction over the bankrupt's person will never be recognised in Australia as operating as an assignment of the bankrupt's Australian lands. *AMP Society v Gregory* (1908) 5 CLR 615 at 623 and 625 and 628 and 630; Dicey and Morris, above, 1121. Notwithstanding this, English and Australian bankruptcy courts, while not recognising the foreign trustee's title to recover in his own name the bankrupt's lands locally situate, have long acted under provisions such as s 29 the Bankruptcy Act 1966 to make available those lands to the foreign trustee, so that they can be realised for the benefit of the creditors in the foreign bankruptcy (always provided, of course, that the foreign sequestration order claims to reach the local lands)."

66. In *Dick v McIntosh* [2002] BPIR 290, the English Court requested the assistance of the Federal Court of Australia in the context of a person against whom a bankruptcy order had been made in England but who had property in Australia. Cooper J appointed the trustee in bankruptcy as receiver of the property with power to take possession and to sell. The relief was granted pursuant to section 29 of the Bankruptcy Act 1966, Cooper J considering it "clear on the authorities that this court is bound to exercise the jurisdiction under s 29 of the Act in respect of the request made by the High Court of

Justice, upon the conditions of s 29 being made out on the material filed by the applicant, subject only to a residual discretion as to the nature and extent of the aid".

67. In short, these cases all depended on the exercise of statutory powers and do not of themselves show orders such as that made in *Re Kooperman* to be available at common law.

Hughes v Hannover

68. *Re Levy's Trusts*, *Re Osborn* and *Re Jackson* were all cited in *Hughes v Hannover*. That case, on which Mr Davies placed a good deal of emphasis, raised an issue as to the relief available under section 426 of the Insolvency Act 1986, which I quoted in paragraph 20 above. Morritt LJ, with whom Roch and Thorpe LJJ agreed, arrived at these conclusions on the point at 516-517:

> "The earlier statutory provisions referred to the request of the other court as being 'sufficient to enable [the English] Court to exercise . . . such jurisdiction as [it] could exercise in regard to similar matters within [its] jurisdiction'. The earlier references to 'jurisdiction in bankruptcy' and 'jurisdiction in bankruptcy and insolvency' were used to identify the courts to which reference was being made. But the jurisdiction which might be exercised was not so limited. Thus a request to the High Court in England for assistance in a form it could not give did not inhibit it from exercising its general equitable jurisdiction to appoint a receiver. The fact that the jurisdiction to do so did not arise under the Bankruptcy Act for the time being in force was immaterial.
>
> In my view the position is the same under s 426. The reference to 'insolvency law' in sub-s (4) serves to identify the courts in any part of the United Kingdom on which the obligation to assist is cast. Those courts have their usual jurisdiction and powers as such courts; in England they are the High Court and certain county courts. There is nothing in s 426 to exclude the general jurisdiction and powers vested in those courts as such under the laws of England and Wales. The purpose of sub-s (5) is not to reduce that jurisdiction or those powers but for the purposes of sub-s (4) only to extend them. Thus the court in England, faced with a request from a relevant country may in respect of the matters specified in the request apply either the insolvency law of the relevant country concerned or its own insolvency law. By itself this would not be of much help for the courts of the relevant country would not normally see much point in making a request to the courts of England in preference to applying its own insolvency law; and if it could not do so it would be unlikely that the court in England could. Moreover the court in England would not require the further authority of sub-s (5) to apply all the provisions of the Insolvency Act 1986 in accordance with their terms. Consequently the concluding words of sub-s (5) introduce the hypothesis that the matters specified in the request fall within the jurisdiction of the court applying the insolvency law under

> consideration in so far as 'comparable matters' would do so …. Thus there is available to the court in England when asked for assistance by the court of a relevant country under s 426 (a) its own general jurisdiction and powers and either (b) the insolvency law of England and Wales as provided for in the Insolvency Act 1986, the specified sections of the Company Directors Disqualification Act 1986 and the subordinate legislation made under any of those provisions or (c) so much of the law of the relevant country as corresponds to that comprised in (b). In the case of (b) and (c) but not (a) the court in England is entitled to apply such law on the hypothesis as to jurisdiction concerning the matters specified in the request to which I have referred."

69. Mr Davies criticised the Judge for failing to address *Hughes v Hannover* in his judgment. *Hughes v Hannover* shows, he submitted, that identifying an authority as one involving section 426 of the 1986 Act or one of its predecessors does not mean that it can cast no light on the Court's powers at common law since such cases often result in the exercise of such powers. A provision such as section 426 may provide the gateway, but assistance is provided under the Court's general jurisdiction and powers. Likewise, the recognition of a foreign bankruptcy supplies a gateway to the exercise of the Court's general jurisdiction and powers.

70. To my mind, however, *Hughes v Hannover* does not assist Mr Davies. The decision was focused on section 426 of the 1986 Act. More specifically, it was held that the assistance which an English Court can afford specified Courts elsewhere pursuant to section 426(4) can be given in exercise of its own general jurisdiction and powers and not merely under "insolvency law" within the meaning of section 426(10). The Court did not have to consider, and did not decide, how far relief might be available under the Court's general jurisdiction or otherwise where a foreign office-holder is recognised at common law. While recognition at common law might, like section 426, be described as a gateway to assistance from the English Court, it cannot be assumed that the assistance which the English Court can grant is the same in each case, even as regards the Court's general jurisdiction and powers. In short, *Hughes v Hannover* says nothing about the relief which recognition enables a foreign office-holder to seek.

Section 44 of the Trustee Act 1925

71. As Mr Davies pointed out, *Kerr and Hunter on Receivers and Administrators*, 21st ed., says in footnote 441 that the report of *Re Kooperman* "is silent as to the means of carrying out the conveyance, but it seems that a vesting order could be obtained under Trustee Act 1925, s.44, without the necessity of proceeding under the Senior Courts Act 1981 s.30". (The reference to section 30 of the Senior Courts Act 1981 should presumably be to section 37, to which I return below.)

72. Section 44 of the Trustee Act 1925 allows the Court to make an order vesting land "in any such person in any such manner and for any such estate or interest as the court may direct" where, among other things, land "is vested in a trustee whether by way of mortgage or otherwise, and it appears to the court to be expedient" (see section 44(vii)). Mr Davies argued that, in the present case, Mr Bedzhamov holds the English property

on trust for Ms Kireeva and so that a vesting order could be made under section 44 in favour of Ms Kireeva.

73. I cannot accept this. It is doubtless the case, as Ms Kireeva has explained in her evidence, that as a matter of Russian bankruptcy law the receiver has a proprietary interest in the bankruptcy assets, which vest in her for control and distribution. However, is not apparent that even Russian law would consider the Belgrave Square Property to be held *on trust* for Ms Kireeva, as opposed to simply being owned by her; in fact, my understanding is that the common law concept of a trust does not feature in Russian law. In any event, and more fundamentally, ownership of English property is in English eyes governed by English law rather than Russian. That being so, it seems to me that Mr Bedzhamov's Russian bankruptcy will not have caused the Belgrave Square Property to be held on trust for her; to the contrary, Ms Kireeva will not have acquired any interest, legal or equitable, in the Belgrave Square Property.

Section 37 of the Senior Courts Act 1981

74. Section 37(1) of the Senior Courts Act 1981 ("the 1981 Act") provides:

> "The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so."

75. Commenting on section 37 of the 1981 Act in *Fourie v Le Roux* [2007] UKHL 1, [2007] 1 WLR 320, Lord Scott distinguished in paragraph 25 between two meanings of "jurisdiction", citing Pickford LJ in *Guaranty Trust Co of New York v Hannay & Co* [1915] 2 KB 536 at 563:

> "The first and, in my opinion, the only really correct sense of the expression that the Court has no jurisdiction is that it has no power to deal with and decide the dispute as to the subject-matter before it, no matter in what form or by whom it is raised. But there is another sense in which it is often used, i.e., that although the Court has power to decide the question it will not according to its settled practice do so except in a certain way and under certain circumstances."

Lord Scott said at paragraph 30 that, "provided the court has in personam jurisdiction over the person against whom an injunction, whether interlocutory or final, is sought, the court has jurisdiction, in the strict sense, to grant it". That being so, Lord Scott said in paragraph 25 that it was clear that Park J had had jurisdiction to grant injunctive relief as he did against a Mr Le Roux and a company referred to as "Fintrade", both having been within the territorial jurisdiction of the Court when the order was made and served with an originating summons shortly afterwards. The issue, Lord Scott explained in paragraph 25, was "not whether Park J had jurisdiction, in the strict sense, to make the freezing order but whether it was proper, in the circumstances as they stood at the time he made the order, for him to make it".

76. A predecessor provision, section 45 of the Supreme Court of Judicature (Consolidation) Act 1925, was in force when *Re Kooperman* was decided. However, the report of that case records that Mr Kooperman was not in the country and so could not be served.

That being so, it is hard to see how section 45 of the 1925 Act, or section 37 of the 1981 Act as its replacement, could provide a sound foundation for the actual decision in *Re Kooperman*.

77. Even so, it is relevant to note cases where the circumstances in which section 37 of the 1981 Act can properly be exercised have been considered. In that connection, Mr Davies took us to *Masri v Consolidated Contractors International (UK) Ltd (No 2)* [2008] EWCA Civ 303, [2009] QB 450 ("*Masri*"), *Tasarruf Mevduati Sigorta Fonu v Merrill Lynch Bank* [2011] UKPC 17, [2012] 1 WLR 1721 ("*TMSF*") and *Broad Idea International Ltd v Convoy Collateral Ltd* [2021] UKPC 24 ("*Broad Idea*"). In *Masri*, one of the questions was whether a receivership order could be made by way of equitable execution in relation to future debts. Lawrence Collins LJ, with whom Lord Neuberger and Ward LJ agreed, concluded in paragraph 184 there was "no reason why in 2008 the court should not exercise a power to appoint a receiver by way of equitable execution over future receipts from a defined asset". In the previous paragraph, in a passage on which Mr Davies relied, Lawrence Collins LJ said:

> "So also this court was asked in *Maclaine Watson & Co Ltd v International Tin Council (No 2)* [1989] Ch 286 to order an affidavit of assets, as an ancillary order, in order to support a judgment of the court, even though the court itself could grant no orders to enforce its judgment (because of the international position of the ITC). The court confirmed, at p 302, that the demands of justice must always be the overriding consideration in considering the scope of the jurisdiction under section 37(1) , in particular to make orders to render any other order of the court effective: p 306."

78. In *TMSF*, the Privy Council held that a receiver could be appointed by way of equitable execution over a power of revocation of trusts. Lord Collins, giving the opinion of the Board, said in paragraph 56 that *Masri* had confirmed or established the following principles:

> "(1) the demands of justice are the overriding consideration in considering the scope of the jurisdiction under section 37(1); (2) the court has power to grant injunctions and appoint receivers in circumstances where no injunction would have been granted or receiver appointed before 1873; (3) a receiver by way of equitable execution may be appointed over an asset whether or not the asset is presently amenable to execution at law; and (4) the jurisdiction to appoint receivers by way of equitable execution can be developed incrementally to apply old principles to new situations".

Lord Collins also, however, noted in paragraph 58 that it had been confirmed in *Masri* that "the power to appoint receivers under section 37(1) is … not unfettered".

79. In *Broad Idea*, both Lord Leggatt, with whom Lords Briggs, Sales and Hamblen agreed, and Sir Geoffrey Vos, with whom Lords Reed and Hodge agreed, referred approvingly to *Masri* and *TMSF*: see paragraphs 45 and 147. What the Privy Council decided in *Broad Idea*, by a majority, was that "where the court has personal jurisdiction over a

party, the court has power - and there is no principle or practice which prevents the exercise of the power - to grant a freezing injunction (or other interim injunction) against that party to assist enforcement through the court's process of a prospective (or existing) foreign judgment" (see paragraph 121). "What in principle matters", Lord Leggatt said in paragraph 92, "is that the applicant has a good arguable case for being granted substantive relief in the form of a judgment that will be enforceable by the court from which a freezing injunction is sought". Referring to Lord Diplock's endorsement in *The Siskina* [1979] AC 210, at 256, of the principle that "the High Court has no power to grant an interlocutory injunction except in protection or assertion of some legal or equitable right which it has jurisdiction to enforce by final judgment", Lord Leggatt said in paragraph 52:

> "There can be no objection to this proposition in so far as it signifies the need to identify an interest of the claimant which merits protection and a legal or equitable principle which justifies exercising the power to grant an injunction to protect that interest by ordering the defendant to do or refrain from doing something."

80. I shall come back to the significance of section 37 of the 1981 Act in the present case after saying something about "modified universalism" and concurrent bankruptcy proceedings.

"Modified universalism"

81. In *Rubin,* Lord Collins noted at paragraph 16 "a trend, but only a trend, to what is called universalism, that is, the 'administration of multinational insolvencies by a leading court applying a single bankruptcy law': Jay Westbrook, 'A Global Solution to Multinational Default' (2000) 98 Mich L Rev 2276, 2277" and that "[w]hat has emerged is what is called by specialists 'modified universalism'". "Universalism", Lord Collins explained in paragraph 17, can be contrasted with the "doctrine of unity". In paragraph 18, Lord Collins referred to views expressed in the first edition of *Cheshire, "Private International Law"* (1935):

> "Professor Cheshire … said that although English law 'neglects the doctrine of unity it recognizes the doctrine of universality'. What he meant was that English law was committed to separate independent bankruptcies in countries where the assets were situate, rather than one bankruptcy in the country of the domicile (the doctrine of unity), but also accepted the title of the foreign trustee to English movables provided that no bankruptcy proceedings had begun within England (universality)."

82. In *Re HIH Casualty and General Insurance Ltd* [2008] UKHL 21, [2008] 1 WLR 852, Lord Hoffmann, at paragraph 30, took the "principle of (modified) universalism to be "the golden thread running through English cross-border insolvency law since the 18th century" and as "requir[ing] that English courts should, so far as consistent with justice and UK public policy, co-operate with the courts in the country of the principal liquidation to ensure that all the company's assets are distributed to its creditors under a single system of distribution". As that last quotation indicates, *HIH* involved

corporate insolvency, but it is plain that Lord Hoffmann saw the "golden thread" as just as central to personal insolvency.

83. By this time, *Cambridge Gas Transportation Corpn v Official Committee of Unsecured Creditors of Navigator Holdings plc* [2006] UKPC 26, [2007] 1 AC 508 ("*Cambridge Gas*") had already been decided. In *Cambridge Gas*, the Privy Council held that the Manx Court had power at common law to assist creditors' representatives who had been appointed as such under the United States Bankruptcy Code by the Federal Bankruptcy Court on the basis that (to quote the headnote) "bankruptcy proceedings were neither judgments in rem nor judgments in personam and rules of private international law concerning the recognition and enforcement of judgments did not apply". Lord Hoffmann, giving the Board's judgment, agreed in paragraph 18 with Fletcher, *"Insolvency in Private International Law"*, that "the common law on cross-border insolvency has for some time been 'in a state of arrested development', partly no doubt because in England a good deal of the ground has been occupied by statutory provisions such as section 426 of the Insolvency Act 1986, the European Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L16, p 1) and the Cross-Border Insolvency Regulations 2006 (SI 2006/1030), giving effect to the UNCITRAL Model Law". In paragraph 19, Lord Hoffmann said:

> "The underdeveloped state of the common law means that unifying principles which apply to both personal and corporate insolvency have not been fully worked out. For example, the rule that English moveables vest automatically in a foreign trustee or assignee has so far been limited to cases in which he was appointed by the court of the country in which the bankrupt was domiciled (in the English sense of that term), as in *Solomons v Ross*, or in which he submitted to the jurisdiction: *In re Davidson's Settlement Trusts* (1873) LR 15 Eq 383. It may be that the criteria for recognition should be wider, but that question does not arise in this case. Submission to the jurisdiction is enough. In the case of immovable property belonging to a foreign bankrupt, there is no automatic vesting but the English court has a discretion to assist the foreign trustee by enabling him to obtain title to or otherwise deal with the property."

In paragraph 20, Lord Hoffmann said that "the underlying principle of universality is of equal application" with corporate insolvency and "is given effect by recognising the person who is empowered under the foreign bankruptcy law to act on behalf of the insolvent company as entitled to do so in England". Turning in paragraph 22 to the limits of the assistance which the Court can give, Lord Hoffmann said in paragraph 22:

> "In cases in which there is statutory authority for providing assistance, the statute specifies what the court may do. For example, section 426(5) of the Insolvency Act 1986 provides that a request from a foreign court shall be authority for an English court to apply 'the insolvency law which is applicable by either court in relation to comparable matters falling within its jurisdiction'. At common law, their Lordships think it is doubtful whether assistance could take the form of applying provisions of the foreign insolvency law which form no part of

> the domestic system. But the domestic court must at least be able to provide assistance by doing whatever it could have done in the case of a domestic insolvency. The purpose of recognition is to enable the foreign office holder or the creditors to avoid having to start parallel insolvency proceedings and to give them the remedies to which they would have been entitled if the equivalent proceedings had taken place in the domestic forum."

84. Reliance was placed on *Cambridge Gas* in *Re Drumm* [2010] IEHC 546, a decision of Dunne J in the Irish High Court. Dunne J held that she had inherent jurisdiction to make an order in aid of the United States Federal Bankruptcy Court, commenting:

> "We do live in a world of increasing world trade and globalisation as mentioned by Lord Hoffmann. Whether one is talking of companies trading internationally or of individuals who have establishments in more than one jurisdiction, the fact of the matter is that businesses and individuals are infinitely more mobile than was the case in 1770. I can see no reason of public policy for refusing to assist the trustee in bankruptcy in this case in the manner sought. On the contrary, it seems to me that it is to the benefit of the creditors of the bankrupt to facilitate the trustee in this case."

85. However, the Supreme Court of Ireland declined to apply *Cambridge Gas* in *Re Flightlease (Ireland) Ltd* [2012] IESC 12 and, in *Rubin*, the United Kingdom Supreme Court held *Cambridge Gas* to have been wrongly decided. There was, Lord Collins explained in *Rubin* at paragraph 132, "no basis for the recognition of the order of the US Bankruptcy Court in the Isle of Man" since the property in question "was situate in the Isle of Man, and therefore … not subject to the in rem jurisdiction of the US Bankruptcy Court" and, not having submitted to it, the appellant in *Cambridge Gas* had not been subject to the personal jurisdiction of the US Bankruptcy Court. Lord Collins said in paragraph 129:

> "A change in the settled law of the recognition and enforcement of judgments, and in particular the formulation of a rule for the identification of those courts which are to be regarded as courts of competent jurisdiction (such as the country where the insolvent entity has its centre of interests and the country with which the judgment debtor has a sufficient or substantial connection), has all the hallmarks of legislation, and is a matter for the legislature and not for judicial innovation. The law relating to the enforcement of foreign judgments and the law relating to international insolvency are not areas of law which have in recent times been left to be developed by judge-made law. As Lord Bridge of Harwich put it in relation to a proposed change in the common law rule relating to fraud as a defence to the enforcement of a foreign judgment, 'if the law is now in need of reform, it is for the legislature, not the judiciary, to effect it': *Owens Bank Ltd v Bracco* [1992] 2 AC 443, 489."

86. In *Singularis Holdings Ltd v PricewaterhouseCoopers* [2014] UKPC 36, [2015] AC 1675 ("*Singularis*"), Lord Sumption explained in paragraph 18 that "it cannot be assumed, simply because there would be a statutory power to make a particular order in the case of domestic insolvency, that a similar power must exist at common law" and that, "[s]o far as *Cambridge Gas* suggests otherwise, the Board is satisfied that it is wrong". For his part, Lord Collins stressed in paragraph 38 that the Court's powers "do not extend to the application, by analogy 'as if' the foreign insolvency were a domestic insolvency, of statutory powers which do not actually apply in the instant case". Lord Mance said in paragraph 134:

> "A domestic court does not have power to assist a foreign court by doing anything which it could properly have done in a domestic insolvency; and it cannot acquire jurisdiction by virtue of any such power."

87. On the other hand, Lord Sumption also said in *Singularis*, at paragraph 19, that "the principle of modified universalism itself … has not been discredited". Lord Sumption went on:

> "In the Board's opinion, the principle of modified universalism is part of the common law, but it is necessary to bear in mind, first, that it is subject to local law and local public policy and, secondly, that the court can only ever act within the limits of its own statutory and common law powers. What are those limits? In the absence of a relevant statutory power, they must depend on the common law, including any proper development of the common law. The question how far it is appropriate to develop the common law so as to recognise an equivalent power does not admit of a single, universal answer. It depends on the nature of the power that the court is being asked to exercise."

88. *Goode, "Principles of Corporate Insolvency Law"*, 5th ed., says the following in paragraph 16-55 about recent decisions in this area:

> "it has been held that the common law power to recognise and assist with the conduct of foreign proceedings is not to be equated with a power to do whatever the court could do in a domestic insolvency, or with the ability to apply legislation 'by analogy' or 'as if' domestic proceedings had been opened. Instead, in each case in which the court is asked to assist at common law by doing something it would be empowered to do by statute in a domestic insolvency, the appropriateness of developing the common law in this way must be tested. The Privy Council decision in *Singularis* suggests that the basic method is to reason by analogy with other cases in which powers to assist at common law in this way have been recognised, having regard to the underlying purpose(s) of the procedure in respect of which assistance is sought."

Concurrent bankruptcies

89. The immovables rule can potentially be overcome by obtaining a bankruptcy order in this jurisdiction or in one from which an office-holder can invoke section 426 of the 1986 Act or the CBIR.

90. *Dicey, Morris & Collins on the Conflict of Laws* states the position under English law as follows in Rule 210:

> "Subject to the effect of the Insolvency Regulation, the jurisdiction of the English courts to adjudge bankrupt a debtor on the petition of a creditor, or on the petition of the debtor, is not excluded by the fact that the debtor has already been adjudged bankrupt by the court of a foreign country."

In paragraph 31-019, it is explained:

> "The fact that a debtor has been adjudicated a bankrupt in a foreign country does not deprive the English court of jurisdiction to adjudge him a bankrupt. Thus, English law does not recognise the principle of 'unity of bankruptcy,' according to which all creditors must have recourse to the courts of the debtor's domicile, or of his principal place of business, and no other court has jurisdiction to adjudicate him bankrupt."

"[T]he fact that the debtor has been made a bankrupt abroad is a reason for the court in its discretion not to exercise jurisdiction" and "[i]f, as a result of the foreign adjudication or otherwise, there are no assets in England, that may be a strong reason for the court to refuse to exercise its jurisdiction" (paragraph 31-019), but "[t]he fact that the debtor has been adjudicated bankrupt abroad does not necessarily mean that there will be no available assets in England" since, among other things, "if he was adjudicated bankrupt in a country outside the United Kingdom … the foreign order would not have any direct effect on immovables in England" (paragraph 31-020).

91. The position would be different if a foreign bankruptcy were deemed already to have discharged the debt of a creditor petitioning in this jurisdiction as the "creditor" would no longer be one. Such a discharge will be effective in the eyes of English law "if either it was granted by a court of the country whose law, according to English private international law, constitutes the proper law of the obligation in question or, alternatively, if it can at least be shown that the discharge, though not granted by the courts of the legal system which constitutes the proper law of the obligation, is recognised under the rules of private international law in force in that jurisdiction as having the effect of discharging the debtor's liability" (Fletcher, *"The Law of Insolvency"*, at paragraph 29-005). However, there is no reason to suppose that Mr Bedzhamov's bankruptcy will yet have operated to discharge any of his debts even as a matter of Russian law. In fact, in *PJSC VTB Bank v Laptev* [2020] EWHC 321 (Ch), [2020] BPIR 624 ("*Laptev*"), where a bankruptcy petition was presented against a person who had previously been made bankrupt in Russia, ICC Judge Burton noted in paragraph 18 that the Russian law experts who gave evidence before her agreed that the making of a bankruptcy order by a Russian Court does not discharge or release the debts

due to a creditor although such discharge would usually arise on termination of the bankruptcy.

92. The experts in *Laptev* differed as to whether, under Russian law, a creditor who has been recognised in Russian bankruptcy proceedings is entitled to petition for bankruptcy in a different jurisdiction. They were at one in considering that a Russian Court would take a teleological approach and apply public policy considerations (paragraph 59 of the judgment), but, there being no known Russian decision on the precise point (paragraph 58), they disagreed about what approach a Russian Court would take. The debtor's expert, Dr Gerbutov, considered that "a creditor's 'proof' in the bankruptcy proceedings provides an exclusive remedy" (paragraph 20), that "from the opening of bankruptcy proceedings, creditors' claims relating to monetary obligations can only be submitted by complying with the procedure for submitting claims in the bankruptcy" (paragraph 20) and that "the Russian court would not permit a creditor who has proved in the Russian bankruptcy to commence parallel insolvency proceedings abroad because it would violate the clear and fundamental principle that a creditor cannot claim outside Russian bankruptcy proceedings" (paragraph 59). In contrast, the creditor's expert, Ms Knutova, said that, in her opinion, "If it were shown to be acting altruistically, for the benefit of all creditors, … Russian law would not be interpreted so as to prohibit the creditor who has proved in a Russian bankruptcy procedure from pursuing the same debtor in a foreign bankruptcy" (paragraph 60). Preferring Dr Gerbutov's evidence, ICC Judge Burton found in paragraph 63 that the debt on which the petition before her was founded "remains due … only in principle" and said that "comity requires that I should find that the Debt is not currently payable to the Bank in a manner that entitles the Bank to petition for Mr Laptev's bankruptcy in this country". ICC Judge Burton went on to observe in paragraph 64 that her conclusion "does not … deprive Mr Laptev's creditors of the right collectively through the bankruptcy in which they have registered their claims to pursue his assets in this jurisdiction" as, "[s]ince her appointment, it has been open to the Russian insolvency administrator of his estate to apply to this court pursuant to the [CBIR]".

93. Were a bankruptcy petition to be presented against Mr Bedzhamov in this jurisdiction and the petition to be opposed on the ground that Russian law rendered the debt "due … only in principle", the Judge hearing the petition would have to decide on the basis of such expert evidence as might be adduced in those proceedings whether Russian law would preclude the creditor from petitioning in circumstances where Ms Kireeva cannot invoke the CBIR (see paragraph 23 above) and, if the Judge was right about the implications of the immovables rule, she cannot, either, realise the Belgrave Square Property for the benefit of Mr Bedzhamov's creditors. I might add that the existence of the Russian bankruptcy has not prevented VPB from bringing the UK Proceedings.

Conclusion

94. At the heart of Mr Davies' submissions was the proposition that, for relevant purposes, section 426 of the 1986 Act and common law recognition can be equated. A foreign office-holder who is recognised at common law is in essentially the same position as one who can invoke section 426. Section 426 and common law recognition both serve as gateways, and a foreign office-holder who has passed through either of them can seek assistance in relation to immovables. The case law that shows that relief in respect of immovables can be granted pursuant to section 426 also establishes that it can be ordered in favour of a foreign office-holder recognised at common law.

95. I cannot accept this argument. It is true that a foreign office-holder may be able to obtain the assistance of the Court either pursuant to section 426 of the 1986 Act or on the strength of recognition at common law, but it does not follow that the same assistance is available in both cases. Section 426 specifically authorises the English Court to assist Courts of other countries sharing the same legal tradition. It cannot be inferred from the fact that a form of assistance can be granted under that provision that it can also be given, without any statutory sanction, to a Court anywhere in the world and regardless of whether the relevant country has a similar legal tradition.

96. Nor does the case law demonstrate that a foreign office-holder who cannot rely on section 426 of the 1986 Act but has merely been recognised at common law can claim relief in respect of immovables in England. As I have said, *Re Levy's Trusts*, *Re Fogarty*, *Re Bolton*, *Re Osborn*, *Re Jackson*, *Radich v Bank of New Zealand* and *Dick v McIntosh* all depended on the exercise of statutory powers, and little significance can be attached to *Re Kooperman*.

97. That recognition at common law will not necessarily allow a foreign office-holder to claim relief such as could have been sought pursuant to section 426 of the 1986 Act is also indicated by *Rubin* and, especially, *Singularis*. As Morritt LJ explained in *Hughes v Hannover*, an English Court asked for assistance under section 426 has available to it both "its own general jurisdiction and powers" and "the insolvency law of England and Wales as provided for in the Insolvency Act 1986, the specified sections of the Company Directors Disqualification Act 1986 and the subordinate legislation made under any of those provisions" as well as some of the law of the relevant country. Yet it can be seen from *Singularis* that, at common law, "[a] domestic court does not have power to assist a foreign court by doing anything which it could properly have done in a domestic insolvency" and that "it cannot be assumed, simply because there would be a statutory power to make a particular order in the case of domestic insolvency, that a similar power must exist at common law".

98. Another theme of Mr Davies' submissions was that the immovables rule bears only on *title* to immovables. When, Mr Davies argued, a foreign office-holder is recognised, the immovables rule means that title is not recognised as vesting automatically in the office-holder but the English Court will recognise everything else. Notwithstanding the immovables rule, the English Court will accept that the office-holder has complete dominion over all the bankrupt's assets, whether movable or immovable, and that immovables are held by the bankrupt for and at the direction of the office-holder.

99. I do not accept this contention, either. Were Mr Davies right, the immovables rule would hardly matter. While a foreign office-holder would not gain title to immovables in England automatically on recognition, there could surely be no obstacle to his obtaining an order for them to be transferred to him. There would be no reason for the office-holder to seek to "mitigate" or "side step" the immovables rule by asking the Court to appoint to appoint a receiver with a power of sale, as in *Re Kooperman*. He could simply demand that title be transferred.

100. In my view, such an analysis underestimates the significance of the immovables rule and is not supported by either the case law or the commentaries. The immovables rule means not just that immovable property in this jurisdiction does not vest automatically in a foreign office-holder, but that (as Story said in the passage from *"Commentaries on the Conflict of Laws"* quoted by Ritchie J in *MacDonald v Georgian Bay Lumber*

Co) "immoveable property is exclusively subject to the laws of the Government within whose territory it is situate". Far, therefore, from a foreign bankruptcy giving the office-holder "complete dominion" over an immovable, it will not be recognised as having conferred any interest in or right to such property on the office-holder and, absent statutory intervention, the office-holder will not be entitled to an order vesting it in him. Were it otherwise, there would have been no need for Astbury J to make a receivership order in *Re Kooperman* and books such as *Dicey, Morris & Collins on the Conflict of Laws, Totty Moss & Segal: Insolvency* and Fletcher, *"The Law of Insolvency"* would all be mistaken in thinking the appointment of a receiver appropriate.

101. Of course, as Lord Sumption explained in *Singularis*, "the principle of modified universalism is part of the common law", and the common law is susceptible to development in the light of that principle. As, however, Lord Sumption also said, the principle is "subject to local law and local public policy", and *Rubin* shows that changes in the law relating to international insolvency can potentially be a matter for the legislature, not the judiciary. Mr Robins argued that the creation of a common law exception to the immovables rule would properly be a matter for Parliament and that the relief available to a foreign office-holder at common law must be recognised as limited by the immovables rule. I agree. A development of the common law which allowed a foreign office-holder to obtain either title to English immovable property or its sale would involve depriving the owner of what under English law is his property. It seems to me that it is for Parliament, not the Courts, to determine whether and, if so, under what conditions that should be permissible.

102. In the present case, Mr Bedzhamov being in the jurisdiction, the Court has jurisdiction "in the strict sense" (to adopt words used by Lord Scott in *Fourie v Le Roux*) to make an order against him under section 37 of the 1981 Act. However, *Masri*, *TMSF* and *Broad Idea* confirm that the power to grant injunctions and, more relevantly, receivers which section 37 confers is not unfettered. In my view, it could not be proper for the Court to use the power to circumvent the immovables rule. The immovables rule has the consequence that, in the eyes of English law, Ms Kireeva has no interest in, or right to, the Belgrave Square Property; that Russian law may say otherwise is irrelevant. That being so, Ms Kireeva cannot be considered to have an interest meriting protection by the grant of a receiver or injunctive relief. It could not be right to make an order which, directly or indirectly, via the appointment of Ms Kireeva with a power of sale, involved the transfer of the Belgrave Square Property to or at the direction of someone who, as a matter of English law, has no interest in, or right to, it.

103. Often at least, the appropriate course where the immovables rule prevents a foreign office-holder from realising immovable property in this jurisdiction will be for a creditor to bring bankruptcy proceedings here or, perhaps, in a jurisdiction from which an office-holder can invoke section 426 of the 1986 Act or the CBIR. That may or may not be possible in the present case. If, however, it is not, that will be because of a particular feature of Russian law. As a matter of English law, the fact that a debtor has been adjudicated bankrupt elsewhere does not deprive the English Court of jurisdiction to make a bankruptcy order. Further, it appears to me that there must be room for argument as to whether it would lie in Mr Bedzhamov's mouth to resist an English bankruptcy petition by reference to the Russian bankruptcy if (a) the debt on which the petition was founded remained undischarged whether or not the creditor had proved in

Russia and (b) the Belgrave Square Property could not otherwise be realised for the benefit of creditors.

104. In the circumstances, it seems to me that the Judge was correct to decline to grant Ms Kireeva assistance in relation to the Belgrave Square Property even on the basis that the Russian bankruptcy was recognised. I would dismiss the Immovables Appeal.

The Set Aside Appeal

105. The Judge dismissed Ms Kireeva's application to set aside Falk J's order of 5 March 2021 on the basis that it "must … follow from the fact that the Trustee is not entitled to any assistance in seeking to take control of the Belgrave Square Property that there is no reason to set aside the March Order" (see paragraph 278 of the judgment).

106. Appealing against that decision, Ms Kireeva argued that her position as Mr Bedzhamov's receiver must have given her standing to oppose the order which Falk J made. However, as I have said, it seems to me, not only that the Judge was right to conclude that Ms Kireeva cannot be granted assistance in relation to the Belgrave Square Property, but that the Judge was mistaken in recognising the Russian bankruptcy. In those circumstances, whether or not Ms Kireeva might be said formally to have standing to advance submissions in relation to the relief Falk J granted by her order, the Judge was plainly justified in dismissing her application to set aside Falk J's order. As things stand, Ms Kireeva is not entitled to recognition as Mr Bedzhamov's receiver and, even if she were, she would have no recognisable right or interest in the Belgrave Square Property.

Overall conclusions

107. I would dismiss the Immovables and Set Aside Appeals, but allow the Recognition Appeal and remit Ms Kireeva's application for recognition to the High Court.

Lord Justice Arnold:

108. I agree with Newey LJ that the Recognition Appeal should be allowed for the reasons he gives. I respectfully disagree with Newey LJ's conclusion that the Immovables and Set Aside Appeals should be dismissed. With the benefit of Newey LJ's thorough review of the relevant legislation, case law and commentaries, I can express my reasons relatively briefly.

The Immovables Appeal

109. I shall approach the Immovables Appeal on the assumption that Ms Kireeva will ultimately be successful in her application for recognition. The effect of that would be that the English courts recognised Ms Kireeva as the duly appointed trustee of Mr Bedzhamov's bankrupt estate, and thus recognised her duty and right to realise the assets comprising that estate for the benefit of Mr Bedzhamov's creditors.

110. Rule 132 of *Dicey, Morris & Collins on the Conflict of Laws* states that "[a]ll rights over, or in relation to, an immovable" are (subject to an exception which is not relevant for present purposes) "governed by the law of the country where the immovable is situate (*lex situs*)". This is a choice of law rule. Its effect, as shown by the authorities reviewed by Newey LJ in paragraph 48 above, is that English law applies to any

question concerning rights to immovables in England to the exclusion of any other law. Its rationale is explained by the editors in paragraph 23-063:

> "It is based on obvious considerations of convenience and expediency. Any other rule would be ineffective, because in the last resort land can only be dealt with in a manner which the *lex situs* allows."

111. Although footnote 208 to the Rule states that "[i]t does not refer to general transfers made in consequence of … bankruptcy (see Ch. 31)", a parallel rule applies in that context. Rule 217 of *Dicey, Morris & Collins* states that "an assignment of a bankrupt's property to the representative of his creditors, under the bankruptcy law of a foreign country, other than Scotland or Northern Ireland, is not, and does not operate as, an assignment of any immovables of the bankrupt situate in England". Although the commentary to Rule 217 does not explain the rationale for the rule, it is evident that the rationale is the same as for Rule 132. It is notable, however, that Rule 217 is expressed in more restricted terms than Rule 132.

112. It follows that, as confirmed by the authorities reviewed by Newey LJ in paragraphs 49-52 above, a court applying English law will not recognise any title to an English immovable conferred upon a foreign trustee in bankruptcy (or equivalent) by the foreign bankruptcy law. Accordingly, the English courts will not recognise any title which Ms Kireeva may have to the Belgrave Square Property under Russian law.

113. The editors of *Dicey, Morris & Collins* also explain in the Commentary to Rule 132 at paragraph 23-065:

> "Indirectly, of course, a foreign immovable may be affected by the judgment of an English court *in personam* ordering some person subject to the control of the court to execute a conveyance or mortgage."

Although the editors go on to note that the converse may not be true, that does not detract from the point that it is important to distinguish between the immovables rule (by which I mean both Rule 132 and Rule 217) on the one hand and the powers of English courts when making orders *in personam* on the other hand.

114. For these reasons, Ms Kireeva's application in relation to the Belgrave Square Property is not that the English courts should recognise any title which Ms Kireeva may have to the Belgrave Square Property under Russian law. Instead, it is that the English courts should exercise their own powers to provide her with assistance in discharging her duty to realise Mr Bedzhamov's assets for the benefit of his creditors by making an order *in personam* against Mr Bedzhamov. This raises the question of what powers the English courts have to assist a foreign office holder under English law. For the reasons explained by Newey LJ in paragraphs 20-23, Ms Kireeva cannot invoke the English courts' powers under section 426 of the Insolvency Act 1986 or the Cross-Border Insolvency Regulations 2006. Instead, she invokes the English courts' powers at common law – or, to be more accurate, their powers as courts of equity.

115. Ms Kireeva's primary case is that the English courts can and should exercise their power to appoint a receiver in respect of the Belgrave Square Property. In the alternative

she seeks a vesting order under section 44 of the Trustee Act 1925. I agree with Newey LJ that section 44 is inapplicable for the reasons he gives in paragraphs 71-73 above. That leaves the appointment of a receiver.

116. I do not understand it to be in dispute that the English courts have power to appoint a receiver in respect of the Belgrave Square Property. They have this power because Mr Bedzhamov, who is the sole registered owner of the Belgrave Square Property, is subject to the *in personam* jurisdiction of the English courts. It is on the same basis that the English courts have made the worldwide freezing order against Mr Bedzhamov. As Lord Scott of Foscote explained in *Fourie v Le Roux* [2007] UKHL 1, [2007] 1 WLR 320:

> "25. … The power of a judge sitting in the High Court to grant an injunction against a party to proceedings properly served is confirmed by, but does not derive from, section 37 of the Supreme Court [now Senior Courts] Act 1981 and its statutory predecessors. It derives from the pre-Supreme Court of Judicature Act 1873 (36 & 37 Vict c 66) powers of the Chancery courts, and other courts, to grant injunctions: …
>
> 30. … provided the court has *in personam* jurisdiction over the person against whom an injunction, whether interlocutory or final, is sought, the court has jurisdiction, in the strict sense, to grant it."

The same is true of the High Court's power to appoint a receiver.

117. As Lord Scott went on to observe at [30], "[t]he practice regarding the grant of injunctions, as established by judicial precedent and rules of court, has not stood still since *The Siskina* [1979] AC 210 was decided and is unrecognisable from the practice to which Cotton LJ was referring in *North London Railway Co v Great Northern Railway Co* (1883) 11 QBD 30, 39–40". This point is illustrated by *Cartier International AG v British Telecommunications plc* [2018] UKSC 28, [2018] 1 WLR 3259. In that case the claimants were the owners of registered trade marks who sought orders requiring internet service providers to block (or at least attempt to block) the ISPs' customers from accessing various websites which were selling counterfeit goods to UK consumers. It was common ground throughout the proceedings that the ISPs were not liable either as primary tortfeasors or as accessories for infringement of the trade marks. One of the issues was whether the English courts had power to grant a mandatory injunction against the ISPs given that they were innocent of any wrongdoing and thus the claimants had no cause of action against them. There was no precedent for the grant of an injunction in such circumstances (although website-blocking orders had been made against ISPs in exercise of the power conferred by section 97A of the Copyright, Designs and Patents Act 1988). The High Court, Court of Appeal and Supreme Court nevertheless all held that the English courts did have such power because the ISPs were subject to the courts' *in personam* jurisdiction, and that it was appropriate to exercise that power, notwithstanding the absence of precedent and the fact the ISPs were not wrongdoers, because the ISPs were in a position to stop the websites using the ISPs' services to infringe the claimants' trade marks by selling goods to the ISPs' customers. As Lord Sumption stated when giving the unanimous judgment of the Supreme Court at [15]:

> "Website blocking orders clearly require more than the mere disclosure of information. But I think that it is clear from the authorities and correct in principle that orders for the disclosure of information [pursuant to *Norwich Pharmacal Co v Customs and Excise Comrs* [1974] AC 133] are only one, admittedly common, category of order which a court may make against a third party to prevent the use of his facilities to commit or facilitate a wrong. I therefore agree … that the website blocking order made in this case could have been made ... on ordinary principles of equity."

118. Similarly, *Tasarruf Mevduati Sigorta Fonu v Merrill Lynch Bank* [2011] UKPC 17, [2012] 1 WLR 1721 confirms that "(3) a receiver by way of equitable execution may be appointed over an asset whether or not the asset is presently amenable to execution at law; and (4) the jurisdiction to appoint receivers by way of equitable execution can be developed incrementally to apply old principles to new situations": see Lord Collins at [56] (quoted more fully by Newey LJ in paragraph 78 above).

119. Thus the remaining issue is whether, in an appropriate case, the English courts should exercise their power to appoint a receiver in circumstances where (i) an application for assistance is made by a foreign office holder (ii) whose appointment has been recognised by the English courts at common law and who seeks assistance in realising (iii) an immovable asset of a bankrupt who is subject to the *in personam* jurisdiction of the English courts for the benefit of the bankrupt's creditors.

120. The only previous case in which the power has been exercised in such circumstances is *Re Kooperman* (1928) 13 B&CR 49. As Newey LJ explains in paragraphs 57-67 above, all the other cases cited in which comparable relief was granted involved the exercise of statutory powers. For the reasons given by Newey LJ in paragraphs 55-56 above, *Re Kooperman* is of little weight. In any event, it is not binding on this Court. The question is therefore one of principle.

121. Ms Kireeva's case is that there is a proper basis for the English courts to exercise the power to appoint a receiver in such circumstances, namely so as to give effect to the principle of "modified universalism" which is part of English law. Mr Bedzhamov's case is that there is no proper basis for the power to be exercised, because (i) the appointment of a receiver would be contrary to the immovables rule and (ii) to hold that the power could be exercised in such circumstances would amount to judicial legislation. Rather, Mr Bedzhamov contends, any creditor who is desirous of ensuring the realisation of the Belgrave Square Property, and has standing to apply, should apply to the English courts for a bankruptcy order under English law in respect of Mr Bedzhamov which would cover immovables situated in England.

122. As Newey LJ has explained, the Judge accepted Mr Bedzhamov's case on the issue of principle. It was common ground before him that, if he accepted Ms Kireeva's case on that issue, there would be a further hearing to determine how he should exercise his discretion as to whether to appoint a receiver. It is therefore common ground in this Court that, if Ms Kireeva is correct on the issue of principle, the application should be remitted to the High Court for consideration of how the discretion should be exercised.

123. In Rule 217 *Dicey, Morris & Collins* supports what might be regarded as a half-way house solution: "in a proper case the English court may authorise the appointment of a

receiver of the rents and profits of such immovables". This statement of the law was cited with apparent approval by Lord Sumption in *Singularis* at [12], and the Judge concluded at [252] that it accurately stated the common law. The authority cited by *Dicey, Morris & Collins* for this proposition is *Re Kooperman*; but *Re Kooperman* goes further, because the receiver was authorised to sell the property and retain the proceeds. It is arguable that the immovables rule does not apply to rents and profits because they are movables (which is why, as I understand it, the Judge concluded that the statement in *Dicey, Morris & Collins* was accurate); but it is also arguable that the immovables rule does apply to rents and profits because they derive from an immovable. Similarly, it is arguable that the immovables rule does not apply to the proceeds of sale of an immovable because the proceeds are movables; but it is also arguable that the immovables rule does apply to the proceeds because they derive from an immovable. These are not questions upon which this Court heard full argument. Whether or not the immovables rule applies to either rents and profits or the proceeds of sale, it seems plain to me that it would be desirable, if possible, for the court to adopt the same approach to assisting a foreign office holder who seeks assistance with respect to realising an immovable asset as to one who seeks assistance with respect to the proceeds of sale of an immovable or the rents and profits of an immovable.

124. Ms Kireeva's case receives support from Lord Hoffmann's obiter statement in *Cambridge Gas Transportation Corp v Official Committee of Unsecured Creditors of Navigator Holdings plc* [2006] UKPC 26, [2007] 1 AC 508 at [19] that "[i]n the case of immovable property belonging to a foreign bankrupt, there is no automatic vesting but the English court has a discretion to assist the foreign trustee by enabling him to obtain title to or otherwise deal with the property". Although aspects of the reasoning in *Cambridge Gas* have subsequently been discredited, the principle of modified universalism remains part of the common law as Lord Sumption explained in *Singularis Holdings Ltd v PricewaterhouseCoopers* [2014] UKPC 36, [2015] AC 1675 at [19] (quoted by Newey LJ in paragraph 87 above). This principle dictates that English courts should, subject to local law and local public policy, co-operate with the courts in the country of the bankruptcy to ensure that all the bankrupt's assets are distributed to the creditors under a single system of distribution. The English courts can only act within the limits of their own statutory and common law powers, but that includes any proper development of the common law.

125. The power to appoint a receiver is a well-established power of courts of equity. As *TMSF* confirms, it is a power that can be applied to new situations where there is a principled basis for doing so. As Lord Hoffmann's dictum in *Cambridge Gas* suggests, modified universalism provides a principled basis for exercising the power in the present context. Moreover, although *Re Kooperman* is of little weight as an authority, it is not one that has previously been judicially doubted or attracted adverse academic comment. On the contrary, it has been treated as correctly stating the law in commentaries (as well as, I presume, inspiring Lord Hoffmann's statement): see, in addition to those cited by Newey LJ in paragraph 54 above, Sheldon *et al*, *Cross-Border Insolvency* (4th ed.) at paragraph 10.9 and Lightman & Moss, *The Law of Administrators and Receivers of Companies* (6th ed.) at paragraph 30-40. Thus the endorsement of the decision by this Court would not represent some radical departure from existing law, but rather would amount to putting the existing law on a sound footing.

126. I do not consider that exercising the power to appoint a receiver in this context would be inconsistent with the immovables rule, or more specifically with Rule 217 of *Dicey, Morris & Collins*. As I have explained, the immovables rule is a choice of law rule which results in the application of English law to questions of title to immovables. In the bankruptcy context it has the effect that the English courts will not simply recognise a foreign office holder's title to an immovable under the foreign law; but it does not mean that the foreign office holder has no rights at all in respect of that immovable. On the contrary, a foreign office holder whose appointment has been recognised by the English courts has the right to apply for the assistance of the English courts in realising assets falling within the bankrupt estate for the benefit of creditors. It is not inconsistent with the Rule 217 for the English courts to come to the assistance of a foreign office holder whose appointment has been recognised by exercising a discretionary power available under English law to make an *in personam* order appointing a receiver in respect of the immovable. Because the power is a discretionary one, the court can take into account factors which properly bear on the exercise of the discretion. In the present case, for example, it might be concluded that, having regard to Ms Kireeva's delay in making her application, the proper course would be to appoint a receiver on terms that preserved Mr Bedzhamov's ability to fund his legal costs, and perhaps his living expenses, from the proceeds of sale of the Belgrave Square Property until judgment on VPB's claim. That might be regarded as achieving practical justice.

127. Nor do I accept that this amounts to judicial legislation, any more than the decisions in *Cartier* did. As I have explained, it would represent a confirmation of the existing case law. At worst, it would be a principled development of the law. As in *Cartier*, it would amount to the common law developing in parallel with statute, a familiar phenomenon in many areas of law. This is not to say that either section 426 of the 1986 Act or the CBIR should be applied by analogy: they do not apply, and it is no part of Ms Kireeva's case that the court should somehow proceed as if one or the other applied.

128. Finally, I do not regard the possibility of an English bankruptcy order being made in respect of Mr Bedzhamov as a satisfactory alternative. That would involve a complete retreat from universalism: in CBIR terms, an English bankruptcy would be a fresh "main proceeding" independent of the Russian one giving rise to the potential for conflict between the two, there being no such thing as an ancillary bankruptcy under English law where the CBIR do not apply. Experience of international bankruptcies and corporate insolvencies in the digital age shows that it is both bad policy and unworkable in practice to treat English bankruptcy and insolvency law as an island unto itself.

129. For the reasons given above, I would allow the Immovables Appeal and remit Ms Kireeva's application in relation to the Belgrave Square Property to the High Court for a hearing as to how the discretion to appoint a receiver should be exercised.

The Set Aside Appeal

130. As Newey LJ has explained, the Judge summarily dismissed Ms Kireeva's application to set aside Falk J's order because he held that the court had no power to grant Ms Kireeva assistance in relation to the Belgrave Square Property. Since I have reached a different conclusion, I would also allow the Set Aside Appeal and remit Ms Kireeva's application to set aside Falk J's order to the High Court so that it can be considered on its merits if Ms Kireeva is successful in her recognition application.

Lord Justice Stuart-Smith:

131. I agree with Newey LJ that the Recognition Appeal should be allowed for the reasons he gives, and that the issue should be remitted to the High Court for determination as he suggests.

132. Faced with two cogent approaches that lead to different conclusions on the Immovables Appeal, I prefer the reasoning and conclusion of Newey LJ. Given the clarity of the judgments of Newey and Arnold LJJ I will explain the reasons for my conclusion very shortly.

133. I accept that Mr Bedzhamov is subject to the *in personam* jurisdiction of the English Court and that, as a result, the Court has jurisdiction, in the strict sense, to make an order appointing a receiver under section 37 of the Senior Courts Act 1981. What is at issue in the Immovables Appeal is essentially a demarcation dispute between the Immovables Rule and the principle of "modified universalism".

134. A trend towards modified universalism lends support to the submission that there is a discretion to appoint a receiver in such cases; but [19] of *Cambridge Gas*, which seems to me to be the high water mark for Ms Kireeva's case, gives no indication of when or on what basis the discretion should be exercised. Furthermore, although that statement of principle has not been overruled, the decisions in *Rubin* and *Singularis* represent at least a retrenchment and do not support the more expansive approach to modified universalism that might have taken hold if *Cambridge Gas* had not been overruled.

135. On the other side of the dispute, the immovables rule is of long-standing and is entrenched in English law. Its effect is that Ms Kireeva has no interest in or rights over the Belgrave Square Property. As such, I do not accept that Ms Kireeva has "an interest … which merits protection". It is not suggested that the English Court could or should exercise its *in personam* jurisdiction to order Mr Bedzhamov to transfer the Belgrave Square Property to Ms Kireeva; and, if it were suggested, I would reject the suggestion as an unprincipled negation of the immovables rule. Yet the effect of appointing a receiver with a power of sale would be essentially the same for practical purposes. If the receiver were not to have a power of sale, it is difficult to see what useful purpose they would serve. Put another way, I see no principled basis upon which it would be right to appoint as a receiver (with or without a power of sale) a person who is considered by English law to have no title to or interest in the Belgrave Square Property.

136. I can see the convenience that may follow from treating the Belgrave Square Property as if it were part of Mr Bedzhamov's movable bankrupt estate. However, if that result is to be achieved, it should in my view be achieved after due consideration by Parliament and not by judicial decision.

137. That being my conclusion on the Immovables Appeal, I also agree with Newey LJ that the Set Aside Appeal should be dismissed, for the reasons he gives.