

# The immovables rule vs modified universalism (Kireeva (as bankruptcy trustee of Bedzhamov) v Bedzhamov)

This analysis was first published on Lexis®PSL on 27 January 2022 and can be found [here](#) (subscription required).

**Restructuring & Insolvency analysis: Two principal questions were in play in this appeal—(i) should live evidence have been heard on whether fraud underpinned a Russian bankruptcy prior to recognition being granted or refused; and, (ii) if the bankruptcy was recognised, could the court assist the foreign trustee in realising a property located in this jurisdiction, whether by appointment of a receiver or otherwise. The Court of Appeal held ‘yes’ to the former question and, by a majority, ‘no’ to the latter. The court’s decision on the latter issue is rooted in the so-called ‘immovables rule’, namely, the rule that rights over immovable property would be governed by the *lex situs* of the property. The decision will have far-reaching consequences in cross-border cases where the UNCITRAL Model Law does not apply and common law recognition is sought. Written by Rowena Page, barrister at Maitland Chambers.**

*Kireeva (as bankruptcy trustee of Georgy Ivanovich Bedzhamov) v Bedzhamov; Vneshprombank LLC v Bedzhamov and others* [\[2022\] EWCA Civ 35](#)

## What are the practical implications of this case?

Prior to the Court of Appeal’s decision, the assumption made in many modern textbooks and commentaries was that the immovables rule was effectively a choice of law rule. In summary—although an English court would not recognise that title to English property had vested in a foreign office-holder, it could in an appropriate case assist that office-holder in getting in and realising the property of an insolvent person or entity. This conclusion (which was favoured by Lord Justice Arnold for the minority in this case) also derived support from dicta in *Cambridge Gas v Official Committee of Unsecured Creditors* [\[2006\] UKPC 26](#), [\[2007\] 1 AC 508](#); *Rubin v Eurofinance SA* [\[2012\] UKSC 46](#), [\[2013\] 1 AC 236](#) and *Singularis Holdings Ltd v PricewaterhouseCoopers* [\[2014\] UKPC 36](#), [\[2015\] AC 1675](#) and reflected a trend towards modified universalism.

The majority’s conclusion that the court has no power at common law to assist a foreign office-holder in respect of immovable property arguably retreats from that trend. In doing so it gives prominence to the immovables rule as a rule meaning not only that immoveable property will not vest automatically in a foreign office-holder, but that a foreign insolvency will not—absent statutory intervention, be recognised as having conferred any interest or right to such property to an office-holder.

The issues that arise because of this decision will not universally be answered by suggesting that a domestic insolvency process could be opened—quite aside from the obvious departure from Lord Hoffmann’s ‘golden thread’ of modified universalism that that would entail, domestic proceedings may not always be possible or practicable. The former of these points was expressly recognised by Arnold LJ, who held that relying on a domestic bankruptcy order being granted to get around the difficulties caused by the majority’s decision involved a ‘complete retreat from [modified] universalism’—at para [128].

This decision is likely to attract considerable attention in the insolvency community both domestically and internationally. It will be of particular relevance to common law jurisdictions that have not adopted the UNCITRAL Model Law, for which recognition at common law may represent the only or principal means of achieving recognition of foreign insolvency proceedings.

## What was the background?

In 2017 Mr Bedzhamov was made bankrupt on the petition of VTB 24 Bank. Mr Bedzhamov was at that time domiciled in England.

In 2021 Mr Bedzhamov’s trustee in bankruptcy, Ms Kireeva, sought recognition at common law of the bankruptcy (recognition under the Cross-Border Insolvency Regulations 2006, [SI 2006/1030](#) not being

available due to Russia not being Mr Bedzhamov's centre of main interests (COMI) at the relevant time) and consequential orders for a substantial English property to be eventually realised.

Mr Bedzhamov opposed recognition, contending that the judgment debt on which the bankruptcy order had been obtained was founded on fraud as his signature had allegedly been forged on the relevant guarantor documents. This contention was raised between the second and last day of the hearing and was not supported by expert evidence.

The judge at first instance held that:

- Mr Bedzhamov had not established 'on balance of probabilities' that the judgment debt was founded on fraud, there was consequently no bar to recognition, and the Russian bankruptcy would be recognised, however
- the court had no power in any event at common law to entrust the English property to the foreign trustee, nor any similar such power to order it to be transferred to or sold by or for her

In the Court of Appeal Mr Bedzhamov appealed against the Judge's conclusion on (i) and the trustee cross-appealed against the judge's conclusion on (ii).

### What did the court decide?

The court allowed Mr Bedzhamov's appeal.

Although late, evidence had eventually been produced by Mr Bedzhamov during the hearing below contesting the validity of his signature on key documents and the court required cross-examination of Mr Bedzhamov before it could reject that evidence. His evidence was not so inherently incredible that it could be discounted without cross-examination.

The recognition application was accordingly remitted to the High Court so that directions for cross-examination could be given.

The trustee's cross-appeal was refused. For the majority, Lord Justice Newey relied on a decision of the Supreme Court of Canada in *MacDonald v Georgian Bay Lumber Co* (1878) 2 SCR 364 and its reliance on commentary in Story's Commentaries on the Conflict of Laws as authority for the proposition that a foreign bankruptcy 'will not be recognised as having conferred any interest or right to [domestic immovable] property' (at para [100]). Accordingly, he held, a foreign office-holder would not have any entitlement to an order vesting such property in them. Any development of the law to allow a foreign office-holder to either obtain title to immovable property or facilitate its sale would be a matter for Parliament, not the courts.

### Case details

- Court: Court of Appeal (Civil Division)
- Judges: Lord Justice Newey, Lord Justice Arnold and Lord Justice Stuart-Smith
- Date of judgment: 21 January 2022

Rowena Page is a barrister at Maitland Chambers. If you have any questions about membership of LexisPSL's Case Analysis Expert Panels, please contact [caseanalysiscommissioning@lexisnexis.co.uk](mailto:caseanalysiscommissioning@lexisnexis.co.uk).

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