
English Courts Can Enforce U.S. Bankruptcy Judgments Without a Separate Proceeding

by Richard L. Epling, Kerry A. Brennan, Irene Dallas and Kent P. Woods

In the case of Rubin v. Eurofinance SA [2010] EWCA Civ 895, [2010] All ER (D) 358 (Jul), the English Court of Appeal, Civil Division, determined that a U.S. bankruptcy court’s monetary default judgment obtained against Eurofinance and its principals, British citizens, was enforceable. In doing so, the Court of Appeal favored a “universal” approach to international bankruptcy cases and recognized adversary proceedings as part and parcel of the main bankruptcy case under American bankruptcy rules. The decision did not require initiation of a separate proceeding to obtain an English court judgment as would usually be required under the rules of private international law. This decision potentially has wide-ranging implications that may streamline the process to enforce judgments in international bankruptcy cases.

The dispute in *Rubin* arose out of a failed rebate scheme. Eurofinance, a British Virgin Islands company, devised a system of rebate coupons that were practically impossible to redeem. It sold the vouchers to businesses that would then pass them along to consumers who were primarily U.S. and Canadian citizens. Ostensibly, the vouchers could be redeemed for the entire purchase price of a product three years from the purchase date. However, redeeming the vouchers required consumers to “navigate a complex and obscure process involving both memory and comprehension tests,” meaning that few were ever redeemed.

The scam folded when the Attorney General for the State of Missouri filed a consumer protection action against The Consumers Trust (“TCT”), the Eurofinance subsidiary organized to process the funds. Anticipating similar suits in other states, Eurofinance caused TCT to file for Chapter 11 protection in the Southern District of New York. Receivers were appointed to manage the case, and the receivers brought an adversary proceeding against Eurofinance and its principals—Adrien, Nicholas, and Justin Roman, all British citizens—to recover, among other things, amounts paid from TCT to Eurofinance. Eurofinance and the individual defendants, after being personally served, declined to make an appearance or defend the

adversary proceeding. The bankruptcy court subsequently entered a monetary default judgment against each of them. The Romans likely anticipated that the TCT receivers would be unable to enforce a judgment from a U.S. bankruptcy adversary proceeding and that the receiver would be required to initiate a separate litigation against them in England.

To enforce the default judgment, the receivers for TCT brought suit in the English High Court of Chancery, asserting that the U.S. bankruptcy proceeding was entitled to recognition as a “foreign main proceeding” under the UNCITRAL Model Law on Cross-Border Insolvency (“Model Law”), which also forms the basis of Chapter 15 of the United States Bankruptcy Code. The UNCITRAL treaty essentially requires signatory countries to coordinate and enforce bankruptcy proceedings with the bankruptcy court of the debtor’s home jurisdiction.

The lower English court, although it recognized the U.S. bankruptcy proceeding under the Model Law, declined to allow enforcement of the monetary default judgment, holding that to do so would violate “English private international law that the judgment of a foreign court is not enforceable unless the defendant was present within the jurisdiction, or in some way submitted himself to the jurisdiction, of the foreign court.” The lower court’s decision would have required the receivers to start a separate action in England against the defendants and prove the case on the merits there. The receivers appealed this aspect of the decision and the defendants challenged the recognition of U.S. bankruptcy proceeding under the Model Law.

Upon review, the English Court of Appeal provided two bases for enforcing the U.S. court’s monetary judgment. First, it determined that the adversary proceeding was “part and parcel of the insolvency proceeding.” Specifically, the court recognized that the avoidance claims prosecuted in the adversary proceeding authorized under the U.S. Bankruptcy Code have “striking” similarities with parallel provisions in Great Britain’s Insolvency Act of 1986. The court further recognized that such actions against the defendants were brought for the collective benefit of all creditors. Second, with respect to the enforcement of the monetary judgment, the court found that general principles of international law of bankruptcy require a universal approach. “There should be a unitary bankruptcy proceeding in the court of the bankrupt’s domicile which receives worldwide recognition and it should apply universally to all of the bankrupt’s assets.” The Court of Appeal further found that there was no unfairness in enforcing the U.S. bankruptcy court judgment because the defendants were aware of the proceedings and obviously made an informed judgment not to participate.

The Court of Appeal indicated that it did not find the decision an easy one although it did refuse leave to appeal to the Supreme Court. A stay of execution has been granted while an application for leave to appeal to the Supreme Court is considered.

The “universal” approach adopted by the English court forms the basis for the UNCITRAL treaty and Chapter 15 of the Bankruptcy Code. This approach recognizes that, in a globalized economy, companies will often have principals and assets located in multiple jurisdictions. Given the realities of transnational commerce, the “universal” approach affirms that a bankruptcy proceeding’s paramount interest is to provide efficient administration and fairness to creditors. The court also relied on prior precedent holding: “[t]he purpose of recognition is to enable the foreign office holder or 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.” *Cambridge Gas Transportation Corporation v. Official Committee of Unsecured Creditors of Navigator Holdings Plc* [2006] UKPC 26 [2007] 1 A.C. 508 [22].

The *Rubin* decision appears to be a coup for debtors, trustees, and other parties prosecuting avoidance actions in an American bankruptcy court on behalf of creditors generally. Avoidance actions and other suits brought as adversary proceedings in a bankruptcy case may pursue foreign defendants and property in the UK and obtain relief from a U.S. court without having to incur the additional expense and delay of initiating a second proceeding in a UK court. At the same time, the *Rubin* decision is a reminder that one must exercise caution in selecting a favorable jurisdiction when preparing to file a bankruptcy that may have international implications, because the decisions of a bankruptcy court may have wide-ranging consequences.

It remains to be seen whether the *Rubin* approach will be widely adopted. The court based its decision in part on the fact that U.S. and English bankruptcy courts employ similar avoidance action proceedings. It was possibly also more willing to grant the order sought by the receivers because of the conduct of the individual debtors. It appears that even the receivers in *Rubin* did not seek to enforce in England all of the judgments rendered by the U.S. bankruptcy court. It is unclear whether an English or other foreign court would enforce an adversary proceeding judgment that might be viewed as incidental and not to the bankruptcy case. Courts also may well be hesitant to enforce judgments from jurisdictions that do not have equivalent bankruptcy systems.

The *Rubin* decision, if adopted by other jurisdictions and courts, presents an important development in transnational bankruptcy practice. Not only does it place primacy on the jurisdiction where the suit is initiated, but it could streamline complicated transnational bankruptcies, which are becoming increasingly common. Furthermore, when considering a defense strategy, defendants should give pause before choosing not to participate in foreign bankruptcy proceeding because the *Rubin* decision and its progeny could result in enforcement of a default judgment in other foreign jurisdictions.

If you have any questions about the content of this advisory, please contact the Pillsbury attorney with whom you regularly work or the authors below.

Richard L. Epling (bio)
New York
+1.212.858.1649
richard.epling@pillsburylaw.com

Kerry A. Brennan (bio)
New York
+1.212.858.1723
kerry.brennan@pillsburylaw.com

Irene Dallas (bio)
London
+44.20.7847.9603
irene.dallas@pillsburylaw.com

Kent P. Woods (bio)
New York
+1.212.858.1836
kent.woods@pillsburylaw.com

This publication is issued periodically to keep Pillsbury Winthrop Shaw Pittman LLP clients and other interested parties informed of current legal developments that may affect or otherwise be of interest to them. The information contained herein do not constitute legal opinion and should not be regarded as a substitute for legal advice.

© 2010 Pillsbury Winthrop Shaw Pittman LLP. All Rights Reserved.