

C-493/18, UB v. VA and others - Exclusive jurisdiction under the European Insolvency Regulation

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In cross-border insolvencies questions of international jurisdiction might arise either in relation to the opening of an insolvency proceeding as such, or – further down the road – in relation to proceedings deriving from already opened insolvency proceedings. In both cases the European Insolvency Regulation Recast (Regulation 2015/848) provides for answers: According to Article 3 of the Regulation the courts of the Member State within the territory of which the centre of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings. Article 6 of the Regulation provides that the courts in such Member States shall have jurisdiction as well for actions deriving directly from insolvency proceedings and closely linked with them. Both kind of decisions are to be automatically recognized in all other member states, either through Art. 19 (judgments opening insolvency proceedings) or through Art. 32 (other judgments).

Whereas

Article 3 is also to be found in the old EIR (Regulation 1346/2000) as is Article 19 (Article 16) and Article 32 (Article 25), Article 6 is a new provision, however based without any doubt on the ECJ's settled case law (Seagon, C-339/07 and Schmid, C-382/12) on the old EIR. Still on the old regulation, but with effect also for Art. 6 and 32 EIR, the ECJ has now specified in the case UB v. VA and others (C-493-18) the scope and the exclusive nature of the *vis attractiva concursus* as (now) laid down in Art. 6 of the EIR.

Some

facts are necessary to understand the case:

The

insolvent debtor UB, a Dutch citizen, owned an apartment and a property complex in France. Although his assets had been frozen by an English court he and his sister VA signed an acknowledgement of debt by which UB acknowledged owing VA

the sum of EUR 500 000 in respect of various loans. UB undertook to repay that sum by 22 August 2017 and subsequently mortgaged, in favour of VA, the apartment and the property complex which he owned in France. In March 2010 he

had sold the apartment to Tiger, a company founded by VA. On 10 May 2011 insolvency proceedings were opened against UB in the United Kingdom by the Croydon County Court. The Croydon County Court authorised the insolvency administrator, to bring an action before the courts in France in order to obtain a ruling that the sale of the properties and the mortgages granted over those properties were avoidable under the relevant United Kingdom bankruptcy law provisions. The insolvency administrator made use of this authorisation and succeeded before the French Regional Court and the Court of Appeal. However, the Court of Cassation referred the question of international jurisdiction of the French courts (and its recognition) to the ECJ for a preliminary ruling.

By

answering the first two referred questions the ECJ has made clear – rather not surprising – that an action brought by the trustee in bankruptcy appointed by a court of the Member State within the territory of which the insolvency proceedings were opened seeking a declaration that the sale of immovable property situated in another Member State and the mortgage granted over it are ineffective as against the general body of creditors falls within the exclusive jurisdiction of the courts of the first Member State.

The

ECJ has pointed out that for determining whether actions derive directly from insolvency

proceedings not the procedural context of the action is decisive, but its legal basis (the trustee asked the French courts to rule on a declaration of ineffectiveness rather than on an action to set the transactions aside).

Equally

insignificant for international jurisdiction to hear an action for the

restitution of immovable property to the bankruptcy estate is where those assets are located. The court underlines that the objective of improving the efficiency and speed of cross-border insolvency proceedings is only consistent with concentrating all the actions directly related to the insolvency proceedings before the courts of the Member State within the territory of which those proceedings were opened.

More intriguing

and not yet subject to the ECJ's case law is the question whether a court can confer its international jurisdiction according to Art. 6 EIR. Eventually, this is what the Croydon Country Court did by authorizing the administrator to bring an action before the French courts in order to obtain a ruling that UB's deals regarding the French properties were avoidable transactions under the relevant United Kingdom bankruptcy law provisions. The referring Court of Cassation therefore

asked in his third question if the UK court's decision authorizing the insolvency administrator to bring an action before the French courts could be classified as a judgment concerning the course of insolvency proceedings within the meaning of Article 25 (now Article 32), which may, on that basis, be recognised with no further formalities, pursuant to that article.

The

court's answer to this question is in line with its decision in *Wiemer & Trachte v. Tadzhir* (C-296/17) in which it already confirmed the exclusive jurisdiction of the courts of the Member State within the territory of which insolvency proceedings have been opened for set aside actions. Hence, the ECJ refused the UK court's approach quite quickly stating that Article 25 (now 32) EIR cannot be interpreted in such a way as to call into question the said exclusive nature of the international jurisdiction of the courts of the Member State within the territory of which the insolvency proceedings were opened to hear actions which derive directly from those proceedings and which are closely connected with them. According to the ECJ Article 25 EIR merely allows for the possibility that the courts of a Member State within the territory of which insolvency proceedings have been opened may also hear and determine an action which derives directly from those proceedings and is closely connected with them, whether that be the court which opened the insolvency proceedings under Article 3(1), or another court of that same Member State having territorial and

substantive jurisdiction.