

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURT
OF ENGLAND & WALES
CHANCERY DIVISION
[2024] EWHC 535 (Ch)



No. BR-2023-001039

Rolls Building
Fetter Lane
London, EC4A 1NL

Wednesday, 31 January 2024

Before:

MR JUSTICE MICHAEL GREEN

IN THE MATTER OF:

(1) KHALEEFA BUTTI OMAIR YOUSIF ALMUHAIRI

(2) HIS EXCELLENCY SEED MOHAMED BUTTI KHALFAN ALQEBAISI

Applicants

MR P JUDD appeared on behalf of the Applicants.

J U D G M E N T

MR JUSTICE MICHAEL GREEN:

- 1 This is an application by Mr Paul Leggatt, Mr David Stark and Mr Salem Mohammed Ballama Al Tamimi (“the Applicants” and also together the “Trustee Committee”) for the recognition of insolvency proceedings in Abu Dhabi, in respect of Khaleefa Butti Omair Yousif Almuhairi and His Excellency Saeed Mohamed Butti Khalfan Alqebaisi (“the Debtors”) as “*foreign main proceedings*” under Article 17 of Schedule 1 to the Cross-Border Insolvency Regulations 2006 (“the CBIR”).
- 2 The insolvency proceedings in respect of which recognition is sought is a single consolidated bankruptcy in respect of both debtors and 28 entities owned by them called “the Corporate Debtors” and a further entity, Centurion Investments, which is a sole proprietorship with no separate legal personality of HE Alqebaisi (“the Bankruptcies”).
- 3 The Bankruptcies were commenced by order on 27 July 2021 and are proceeding under an order dated 15 September 2023 to restructure the assets and liabilities of the Debtors.
- 4 The Applicants seek an order for the recognition of the Bankruptcies in the terms set out in a draft order and the Applicants also seek additional relief on recognition as set out in that order in the form of a stay on the continuation of proceedings for execution against the Debtors’ assets in this jurisdiction and the entrusting and realisation of the Debtors’ assets in this jurisdiction to the Trustee Committee.
- 5 I have been greatly helped by the skeleton argument and oral submissions of Mr Philip Judd this morning on behalf of the Applicants. It seems to me that this is really rather straightforward now in the light of that explanation of the position from him, apart from perhaps one wrinkle, being the refusal of recognition on a similar application for recognition by Sir Jeremy Cooke sitting in the Dubai International Financial Centre Court. Otherwise, the court is obliged under the CBIR now to recognise the Bankruptcies as “*foreign main proceedings*”.
- 6 It seems to me that on the evidence the Applicants have proved as follows:
 - (1) That the Bankruptcies are foreign proceedings for the purposes of the CBIR, being proceedings that were open pursuant to an insolvency law and satisfying the other requirements such as court control and a restructuring purpose.
 - (2) That the Bankruptcies are “*foreign main proceedings*” because the Debtors’ COMI (centre of main interests) have at all times been in the UAE, which is the relevant state for the purposes of the CBIR.
 - (3) That the Trustee Committee collectively and the Applicants individually is and are the “*foreign representatives*” of the Debtors, being appointed by the Abu Dhabi Commercial Court in relation to the Bankruptcies.
 - (4) The court is therefore bound to recognise the Bankruptcies.
- 7 Mr Judd informed me that the UAE’s insolvency laws will undergo legislative change on 1 May 2024 and that was also detailed in one of the witness statements before me that I have read, although as currently drafted this will not impact on the effect of the Bankruptcies for the purposes of recognition under the CBIR. However, the Applicants, through Mr Judd, are prepared to undertake that should the legislative changes to the UAE bankruptcy law

change before implementation so as to affect the basis of any recognition order made in this court, they will return to this court as soon as practicable after they become aware of such changes. I am happy to accept such an undertaking and, as discussed, that will go into the order by way of a recital.

- 8 As I said, the recognition was refused on a previous occasion in a different jurisdiction, Dubai, by Sir Jeremy Cooke sitting in the DIFC Court. He refused recognition of the Bankruptcies because, as a matter of jurisdiction, the UNCITRAL Model Law, as applied in the DIFC, makes no provision for individual debtors, only for insolvent companies. The CBIR in this jurisdiction does apply to individual bankruptcies. Furthermore, the decision was made by Sir Jeremy Cooke at a much earlier stage when there was no restructuring plan in place. Mr Judd showed me certain passages from the judgment which make it clear that the fact that the application was being heard at an early stage, shortly after the bankruptcy orders had been made, much influenced the decision that was ultimately made that there was no jurisdiction to recognise those orders. An important event that was yet to occur is that the restructuring plan has now been approved by the creditors, 88 per cent of them, and sanctioned by the court in Abu Dhabi, and the Debtors' assets have now been transferred to SPVs in order to facilitate distribution. If that plan were to fail, a liquidation will then ensue.
- 9 I therefore agree with Mr Judd that Sir Jeremy Cooke's refusal to recognise the Bankruptcies in 2022 has no relevance to what I should do in relation to these applications and the test that I need to apply under the CBIR.
- 10 Indeed, the bringing of this recognition application was approved by the Abu Dhabi court. The Creditor Coordinating Committee has been notified, and that included the Commercial Bank of Dubai, which has the benefit of a worldwide freezing order granted in this jurisdiction, and there has been correspondence between the solicitors for the Commercial Bank of Dubai and the Applicants' solicitors in relation to this application, but nothing particularly material has emerged from that save that there are potentially further assets within this jurisdiction that may become subject to the control of the Trustee Committee.
- 11 The creditors in the proceedings before the DIFC Court all voted in favour of the insolvency process affecting the Debtors and it is those creditors who might in theory be affected by the stay consequent on recognition in terms of their ability to enforce any judgment that they obtain. None have appeared before me today, nor have they given any indication that they intended to oppose this, and they do not in any event have any live proceedings in the UK that might be affected by the stay directly consequent on recognition.
- 12 I do not think it is necessary for me to explain any of the background. By Article 17 of Schedule 1 to the CBIR provides as follows:

“1. Subject to Article 6 [the public policy exception] a foreign proceeding shall be recognised if –

- (a) it is a foreign proceeding within the meaning of sub-paragraph (i) of article 2;
- (b) the foreign representative applying for recognition is a person or body within the meaning of sub-paragraph (j) of article 2;

(c) the application meets the requirements of paragraphs 2 and 3 of article 15; and (d) the application has been submitted to the court referred to in article 4.”

- 13 Article 17.2 of Schedule 1 to the CBIR then deals with the distinction between main and non-main proceedings and says as follows:
- “2. The foreign proceedings shall be recognised – (a) as a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests; or (b) as a foreign non-main proceeding if the debtor has an establishment ... in the foreign State.”
- 14 As to the first stage of recognition the Applicants have to satisfy me that the Bankruptcies are a foreign proceeding as defined in Article 2 of Schedule 1; that is if it is (a) a collective judicial or administrative proceedings in a foreign state, including an interim proceedings; (b) pursuant to a law relating to insolvency; (c) a proceedings in which the assets and affairs of the debtor is subject to control or supervision by a foreign court; and (d) for the purposes of reorganisation or liquidation.
- 15 By reference to the evidence that I have read and has been adduced in support of this application, I am satisfied that the Bankruptcies are within that definition. As to whether they are “*foreign main proceedings*”, it is clearly established that the Debtors’ COMIs are in UAE, which is the relevant state for these purposes. Accordingly, I am obliged to recognise the Bankruptcies as a “*foreign main proceeding*” and the automatic stay under Article 20 will then apply.
- 16 The Applicants seek further relief under Article 21 in particular to prevent any dealings with the specific properties located in London, and again I am prepared to grant the additional relief sought in the draft order.
- 17 Mr Judd also properly drew to my attention some other matters as part of the Applicants’ duty of full and frank disclosure. He also brought me up to date with the correspondence I referred to with the solicitors for the Commercial Bank of Dubai and in relation to the particular properties that have been identified. I have already dealt with the decision of Sir Jeremy Cooke and I need say no more about that. Obviously, the order may have an impact on third parties, but it is to coordinate, across several jurisdictions, the restructuring plan which is for the benefit of the creditors as a whole.
- 18 I am satisfied that none of the matters set out by way of full and frank disclosure affect what I propose to do, and indeed what I am obliged to do given the findings on the evidence, and that is to make the order in the terms sought.
-

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by **Opus 2 International Limited**
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital*

This transcript is subject to the Judge's approval.