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CASE LAW ON UNCITRAL TEXTS (CLOUT)

UNCITRAL Model Law on Cross-Border Insolvency (MLCBI)

Case 2179: MLCBI 19; 20¹

United Kingdom of Great Britain and Northern Ireland: High Court of Justice,
King's Bench Division (Commercial Court)

Case No. CL-2022-000103

OOO Nevskoe (A company incorporated in the Russian Federation) v. Uab Baltijos Šalių Industrinio Perdirbimo Centras (formerly "UAB Alfagra") (A company incorporated in Lithuania) v. Bilderlings Pay Limited (A company incorporated in England)

11 January 2023

Original in English

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[**Keywords:** *creditors-protection; recognition; relief; relief-automatic; relief-provisional*]

A company undergoing an insolvency proceeding in Lithuania (the defendant) owed money to a judgment creditor (the claimant). The claimant discovered that the defendant had received money into a bank account held with a third party located in England. In a separate proceeding, the defendant had claimed that the money with that third party was the only asset of the defendant. The amount was considerably less than the amount owed by the defendant to the claimant. If the claimant was to recover at least a part of the judgment sum from the defendant, it needed to enforce against that asset. Having first obtained a sealed interim order from the Court preventing the third party from transferring any of that money to the defendant, the claimant petitioned the Court to allow it, as a matter of urgency, to enforce its judgment against that asset.

The urgency arose because, shortly before a hearing at which the Court was to decide whether to allow the claimant to receive the money, an insolvency representative appointed in the Lithuanian insolvency proceeding sought recognition of that proceeding in England and Wales under the Cross-Border Insolvency Regulations 2006 (CBIR) enacting the UNCITRAL MLCBI in the United Kingdom. That recognition application was pending in a different court in England and Wales that was scheduled to consider it the day after the hearing of the claimant's petition by the Court.

¹ This case was brought to the attention of the secretariat by Irit Mevorach, National Correspondent.



The Court was aware of implications of the most likely recognition of the Lithuanian insolvency proceedings as the foreign main proceeding under article 20 of the CBIR (enacting article 20 MLCBI) for its hearing and the claimant. In particular, such recognition, unless a specific relief was granted upon recognition, would bar the hearing and require the claimant to seek enforcement through the recognized insolvency proceeding.

Central to the Court's assessment in the hearing was the determination of whether the "first past the post" principle² applied in the case. The Court found that it did. In reaching that decision, the Court noted that CBIR evidenced a deliberate distinction between foreign and domestic insolvency and also between recognized and unrecognized foreign insolvency orders and processes. The Court described the CBIR recognition process as streamlined, rapid, straightforward and close to semi-automatic but nonetheless a process that: (a) clearly made foreign insolvency orders and processes unrecognized until a recognition order was granted on application to the court; and (b) created a point in time before which the foreign insolvency was not recognized, and a point in time, after the recognition order was made, when it was recognized. The Court pointed out that the CBIR regime, at the expiry of the transitional period after Brexit, was applicable also to European Union member States such as Lithuania that previously benefited from automatic recognition of their insolvency decisions in the United Kingdom.

Having recalled that there were powers for interim orders in appropriate cases under the CBIR (see article 19 MLCBI as enacted in the United Kingdom) but they had not been used in this case, the Court concluded that, absent abuse or other countervailing considerations, the claimant was entitled to "the fruits of its own diligence in beating other creditors", including an insolvency representative appointed in the Lithuanian insolvency proceedings whose role was not subject to an extant recognition order in England and Wales. Acknowledging that its decision would have the effect of prioritizing the debt due to the claimant over others, the Court was of the view that, in the absence of a domestic insolvency proceeding or recognition order, it was not obliged to protect overseas creditors that had chosen to prove their claims in an unrecognized foreign insolvency proceeding.

Note for the reader

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² According to which, a creditor is in principle entitled to the fruits of its own diligence and to enforce its debt obtaining priority over other creditors.

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