

Slutsker v Haron Investments Limited [2013] EWCA Civ 430 Considering community property regimes...

Insights - 27/09/2013

Slutsker v Haron Investments Limited [2013] EWCA Civ 430 Considering community property regimes when transferring property into trust

In the English case of *Slutsker v Haron Investments Limited [2013] EWCA Civ 430* the Court of Appeal considered the way in which the matrimonial property regime in Russia would be recognised in respect of English property held in a Cayman law trust.

Facts

Mr and Mrs Slutsker were two Russian individuals who had been married in Moscow. Mrs Slutsker wanted their son to go to school in England and as such looked into buying a house in which she and her son could live. The intention was for the house to be held in a trust for the ultimate benefit of the son and any other children of the marriage. A suitable house was found and transferred into the name of a nominee, who held on bare trust initially for Mrs Slutsker and subsequently for the trustee of a Cayman law trust, of which Mr and Mrs Slutsker, her present and future children, Mrs Slutsker's mother and father, Mr Slutsker's mother and father and charity were beneficiaries.

The purchase price for the property had been paid into the solicitor's client account from a bank account belonging to Mrs Slutsker but constituted matrimonial property under Russian law (meaning it belonged to Mr and Mrs Slutsker in equal shares).

Mr and Mrs Slutsker subsequently divorced and Mr Slutsker was excluded from benefit under the Cayman law trust. Mr Slutsker argued that, as the money used to purchase the property belonged to them in equal shares as a matter of Russian law, half of the interest in the property was held by the trustee of the Cayman law trust on a resulting trust for Mr Slutsker as a matter of English law.

Judgment

Applying English conflict of law rules, the Court of Appeal held that Russian law, as the law of the matrimonial domicile, should be applied throughout in determining each party's interest in the property at each stage of the transaction and that it was wrong to translate those rights into English law rights at the point when the property was held in the client account. As such, the validity and effect of Mrs Slutsker's dealings with anything that was joint family property under the Russian matrimonial property regime must be determined by reference to Russian law alone, notwithstanding that the current claim related to property in England.

As a matter of Russian law, one spouse could dispose of matrimonial property if the other spouse consented to the disposition or if, in the absence of such consent, the other spouse did not bring proceedings to have the disposition declared invalid within the relevant time limit. The Court found that Mr Slutsker knew that a structure had been created which was inconsistent with the matrimonial property regime under Russian law and had given his consent to the transaction as a whole. Furthermore, he had not challenged the transfer of the property into the Cayman law trust. As a matter of Russian law, Mr Slutsker therefore had no interest in the property at the point it was held beneficially for the trustee of the Cayman law trust and the resulting trust argument therefore failed.

Comment

The claim by Mr Slutsker was an attempt to attack the validity of the transfer of property to the trust and clearly illustrates why individuals and trustees need to consider whether property is subject to a matrimonial or community property regime before dealing with the same, particularly when such property is to be held in a structure which is inconsistent with such regime. Where property is subject to a matrimonial or community property regime, trustees should, where possible, ensure that any necessary consents or waivers from spouses have been obtained.

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