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Cambridge Gas
Cambridge Gas Transport Corporation v The Official Committee of Unsecured Creditors (of Navigator Holdings PLC and others) (Isle of Man) [2006] 3 All ER 829 16th May 2006
Isle of Man, United States, Switzerland, Cayman Islands, Bahamas
Privy Council of the United Kingdom

Key Words
Common Law assistance; cross-Border cooperation; nature of judgment; judgement (*in personam*; judgement *in rem*; judicial assistance; Chapter 11

Summary of Facts of the Case

Cambridge Gas was relatively straight forward in terms of its procedural history but complicated considerably by the corporate structure of the business at the heart of the case. The investors in question invested in a shipping business, which despite borrowings on the New York bond market, failed. The investors then petitioned for relief in New York under Chapter 11 of the US Bankruptcy Code (corporate restructuring process). The Federal Bankruptcy Court confirmed a plan approved by almost all of the creditors and ordered that it be executed. The complications in the case arose by virtue of the composition of the business; the investors directly or indirectly owned a company called Vela (Bahamas). Through a holding company, Vela owned Cambridge Gas, which was a Cayman Islands company. Cambridge Gas directly or indirectly owned approximately 70% of the shares of a company called Navigator (Isle of Man) and Navigator owned all the shares of an Isle of Man company, which in turn owned companies each of which owned one ship. The plan confirmed by the New York Court was that the assets of Navigator would be vested in the creditors and the equity interests of the previous investors would be extinguished.

In the knowledge that the plan could not automatically have effect under the law of the Isle of Man, the New York Court sent a Letter of Request to the High Court of Justice of the Isle of Man, asking for assistance in giving effect to the plan and confirmation order. The Committee of Creditors petitioned the High Court for an order vesting the shares in their representative and Cambridge cross-petitioned asking the court not to recognise or enforce the terms of the plan on the basis that Cambridge, as a separate legal entity registered in the Cayman Islands, had never submitted to the jurisdiction of the New York court, although its parent company, Vela, had.

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Cooperation and/ or Coordination Issue

The first question pertained to the nature of the decision of the New York Court; was it a judgment *in rem* or *in personam* or something else entirely? The second question was, upon what basis, if any, was the order enforceable in the Isle of Man? Issues such as the nature of the judgment, the type of transaction and indeed issues of jurisdiction have a different relevance in the context of cooperation and coordination in the EU, but they are relevant nonetheless. Similar to the common law, the EU has its own shared legal principles upon which general expectations of assistance and cooperation are based, for example Article 4(3) TEU acknowledges the principle of sincere cooperation and a responsibility on Member States to assist each other. These general expectations, in turn, have been specifically articulated in the case of insolvency through the EIR and EIR Recast.

Resolution

The Privy Council ruled that the purpose of bankruptcy proceedings was not to establish the existence of rights, whether *in rem* or *in personam*, but to provide a mechanism of collective enforcement of the rights of creditors [para 15]. Thus, while it may be necessary in the course of bankruptcy proceedings to establish rights that are challenged, that is an incidental procedural matter and not the central to the purpose of the proceedings [para 15]. Lord Hoffman went on to note that traditionally, English common law had advanced the idea that fairness between creditors required that bankruptcy proceedings should have universal application, in other words universality, and that a single bankruptcy should ideally proceed for the benefit of all creditors [para 16]. He found that in English Law effect is given to the underlying principle of universality by the recognition of the person who is empowered under the foreign bankruptcy law, to act on behalf of the insolvent company as entitled to do so in England [para 20]. Thus, it was found that the principle of universality formed a basis for the common law principles of judicial assistance in international insolvency, which was sufficient to confer jurisdiction on the Court in the Isle of Man to assist in any way that it could, had this been a domestic process.

It is worth noting, however, that this judgment was widely criticised and has consequently been departed from by the UK Supreme Court (*Rubin*) and the Privy Council (*Singularis*).

Applicability to Preventive Restructuring

This case concerned a US Chapter 11 restructuring, upon which some EU restructuring processes are based – for example, Irish Examinership – and which has informed the framework contained in the PRD if many of the options therein are accepted. Although allowing variations in a number of areas, the PRD does mandate that restructuring processes contain some specific rules; most relevant in this case is that court confirmation is required for any plan wherein there is a cross-class cram-down, in other words where one or more classes of creditors can be outvoted by a majority of classes on the adoption of the plan. Thus, recognition by one court of the decisions of the court of another Member State, particularly in relation to a restructuring plan, is essential; otherwise at best, the restructuring efforts may be unnecessarily delayed. At worst, they may be impeded or frustrated to the extent that they are no longer possible, to the detriment of the parties involved, namely creditors, the debtor itself and employees.

Applicability of Existing Rules and Guidelines

The EIR Recast

A significant issue in this case was that of jurisdiction, specifically had Cambridge Gas submitted to the jurisdiction of the New York Court. While this is understandably an issue when the jurisdictions involved are the United States and the Isle of Man, it is considerably less likely to present a challenge in the EU in view of the PRD and EIR Recast. The PRD provides that only those affected by a restructuring plan can have a vote in its adoption (Article 9(2)) and that those not involved in the adoption of a restructuring plan under national law are not affected by the plan (Article 15(2)).

Where the restructuring process is not compliant with the PRD, it could still be covered by the EIR Recast via inclusion in Annex A. As such, the opening of applicable proceedings in one Member State must be recognised in all other Member States (Article 19). Furthermore, jurisdiction over any action deriving directly from the insolvency proceedings and which is closely linked with them rests with the Member State in which proceedings have been opened (Article 6) and the conditions for those proceedings, including their opening and closure is determined by the law of the Member State in which the proceedings have been opened. Finally, the co-operation obligations contained in the Recast also apply to insolvency practitioners and courts involved.

On a higher level, there may be the potential for a distinction to be made between initial recognition under the EIR Recast and continued co-operation and the format that this takes, which is some of the subject matter of the JCOERE Reports. In this context, the obligation of co-operation might be equivocated to the common law treatment of judicial assistance in this case.