IN THE SUPREME COURT OF THE UNITED KINGDOM **UKSC/2025/0094**

ON APPEAL FROM THE COURT OF APPEAL, CIVIL DIVISION

(LORD JUSTICE NEWEY, LORD JUSTICE POPPLEWELL, LORD JUSTICE SNOWDEN)

B E T W E E N:

SERVIS-TERMINAL LLC

(A COMPANY INCORPORATED UNDER THE LAWS OF THE RUSSIAN FEDERATION)

Appellant

-and-

MR VALERIY ERNESTOVICH DRELLE

Respondent

STATEMENT OF FACTS AND ISSUES

Background

The Parties

1. The Appellant, Servis-Terminal LLC (**"ST"**), is a Russian company in bankruptcy and acts by its trustee-in-bankruptcy, Mr Sergey Lisin. The Respondent, Mr Valeriy Drelle (**"Mr Drelle"**), is the former Director General of ST. He was also a shareholder.

2. ST was a customs brokerage business. Its prime service was assisting clients in fulfilling import and export requirements, which included the payment of customs duties to the Russian authorities. Gazprom Neft (**"GPN"**) was a major customer of ST.

3. GPN is a subsidiary of PJSC Gazprom (**"Gazprom"**), a publicly listed company engaged in energy production. The Russian State holds (directly or indirectly) a 50.23% stake in Gazprom. Gazprom owns (directly or indirectly) 95.68% of the shares in GPN. GPN is the majority creditor in ST's bankruptcy, with a registered claim of RUB 10.3 billion representing 99.9% of its debts. GPN became a "designated person" for sanctions law purposes on 10 January 2025.

4. Under its contract with GPN, ST undertook to perform GPN's customs clearance obligations and discharge its customs liabilities as they fell due. In order for ST to meet the customs obligations of GPN each month, GPN made large advance payments to ST. As a result, ST often held substantial cash reserves. There is a dispute as to what restrictions, if any, there were as to how the cash reserves were to be held pending payment.

5. In December 2011, ST advanced a loan of RUB 2 billion for an initial period of five months with interest at the rate of 8% (the **"Loan"**) to Fort-Steiton LLC (**"Fort-Steiton"**), a Russian company, with the benefit of a personal guarantee from Fort-Steiton's owner, a Mr Anatoly Motylev (**"Mr Motylev"**). Mr Motylev was the Chairman of the Russian Credit Bank (**"RCB"**) and its majority shareholder. There is a dispute as to the purpose of the Loan, Mr Drelle's case being (as recorded by ICCJ Burton at §46 of her judgment) that it be provided to help fund his acquisition of RCB. It is common ground that the source of the Loan was funds advanced for the purpose of discharging customs liabilities.

6. Mr Drelle subsequently agreed to reduce the interest rate and extend the period of the Loan.

7. A company called Intercom Capital LLC ("**Intercom**"), which was controlled by Mr Motylev, succeeded to Fort-Steiton's obligations under the Loan on 5 November 2014.

8. In or around July 2015, RCB collapsed. As a result, ST lost around RUB 7.9 billion held in its accounts with RCB. The majority of these funds came from GPN.

9. Shortly after RCB's collapse, Mr Motylev left Russia. The Loan was never repaid. Mr Motylev was declared bankrupt in Russia in February 2018, and in England in November 2020.

10. Mr Drelle has left Russia and settled in London.

<u>The Russian Bankruptcy Proceedings</u>

11. In April 2017, the Arbitrazh Court of Yaroslavl Region declared ST bankrupt and appointed Mr Lisin as its Trustee-in-Bankruptcy.

12. In March 2018, ST issued proceedings against Mr Drelle in the Arbitrazh Court of Yaroslavl Region. The basis of ST's claim against Mr Drelle was that, by advancing the Loan, he had acted unreasonably and in bad faith, and had caused loss to ST.

13. Mr Drelle defended the proceedings through his lawyer who was granted a power of attorney. GPN, as an admitted creditor of ST, was entitled to and did participate in the proceedings as a third party and independently from Mr Lisin.

14. Mr Drelle defended the claim on a number of grounds, including that the Loan had been entered into in order to generate a profit; there were no grounds to doubt Fort-Steiton's solvency; he had acted in accordance with established business practice in obtaining a guarantee from Mr Motylev and had no grounds to doubt Mr Motylev's creditworthiness since he was the owner of a banking group and considerable assets; ST had issued several other loans to Fort-Steiton which had all been repaid with interest; and the shareholders had approved the granting of the Loan.

15. The proceedings in the Arbitrazh Court of Yaroslavl Region were conducted over a 14-month period before Judge M.B. Frolovicheva. In total there were 10 hearings as well as written submissions. In a reasoned written judgment dated 24 May 2019, Judge Frolovicheva held that Mr Drelle breached his duties to ST. Mr Drelle was ordered to pay RUB 2 billion to ST. ST's claim for loss of profits was dismissed on the grounds that it was not a lending institution. (Pages 405-415)

16. Mr Drelle subsequently appealed to the Court of Appeal (Second Arbitrazh Appeal Court) before a panel of three judges. The appeal was conducted by way of full review and gave Mr Drelle a further opportunity to argue the merits. Following a hearing on 31 July 2019, in a judgment dated 6 August 2019, the Court of Appeal (Second Arbitrazh Appeal Court) dismissed the appeal and upheld the original order. (Pages 386-404)

17. Mr Drelle subsequently appealed to the Cassation Instance Arbitrazh Court (Arbitrazh Court of Volgo-Vyatsky District), with a panel of three judges. In a judgment dated 6 November 2019, the appeal was dismissed. (Pages 369-385)

18. Mr Drelle subsequently appealed to the Supreme Court of the Russian Federation. His application was considered by a single judge who held that there were no grounds for the appeal. By a ruling dated 17 February 2020, the appeal was dismissed. (Pages 364-368)

The English Bankruptcy Proceedings

19. On 9 October 2020, ST served a statutory demand (the **"Statutory Demand"**) on Mr Drelle based on the judgment of the Arbitrazh Court of the Yaroslavl District dated 24 May 2019 (the "**Russian Judgment**"). (Pages 238-240)

20. On 13 October 2020, ST presented a bankruptcy petition (the **"Petition"**) on an expedited basis under section 270 of the Insolvency Act 1986 (the **"Act"**). (Pages 405-415)

21. On 27 October 2020, Mr Drelle issued an application to set aside the Statutory Demand (the **"Set Aside Application"**). The grounds of the Set Aside Application (and which were the same grounds opposing the making of a bankruptcy order) were that the Russian Judgment debt was disputed on bona fide and substantial grounds because the Russian Judgments were improperly obtained, biased and/or contrary to natural justice and English public policy, further or alternatively they were obtained by fraud and/or collusion. (Pages 241-243)

22. Mr Drelle adduced witness evidence from Alyona Zheglova, ST's finance officer, in relation to his contention that the outcome of the Russian proceedings was pre-determined against him, as well as expert evidence on Russian law from Maxim Kulkov, and on State interference in Russian legal proceedings from John Lough. ST also adduced expert evidence in those fields.

23. Mr Drelle did not contend, at that stage, that the Court could not make a bankruptcy order on the basis of an unrecognised foreign judgment.

24. On 12 October 2021, Mr Drelle issued an application for security for costs of the Set Aside Application and Petition (the **"SFC Application"**). The SFC Application was heard on 22 March 2022 by ICC Judge Jones, who ordered ST to pay the sum of £675,000 by way of security into Court within 42 days (the **"Security"**). On 26 April 2022, the Security was paid into Court by GPN.

25. The trial of the Petition took place on 28, 29 and 30 June 2022 before ICC Judge Burton. In her judgment, which was handed down on 9 March 2023, ICC Judge Burton found that the Russian Judgment debt was not disputed on bona fide and substantial grounds: [2023] EWHC 506 (Ch); [2024] BPIR 285. (Page 237)

26. On 31 March 2023, the Bankruptcy Order was made.

27. On 20 April 2023, Mr Drelle sought permission to appeal the Bankruptcy Order on the basis that ICC Judge Burton's conclusion that the Russian Judgment debt was not disputed on *bona fide* and substantial grounds was wrong.

28. On 4 May 2023 Mr Drelle served proposed amended grounds of appeal raising the contention that the Russian Judgment did not constitute a petition debt since it had not been the subject of recognition proceedings, and on 31 July 2023, Fancourt J gave Mr Drelle permission to amend his grounds of appeal in such terms.

29. On 18 May 2023, Nicholas Nicholson, Russell Parkin, and Robert Starkins of Grant Thornton UK LLP were appointed by the Secretary of State as the joint trustees in bankruptcy of Mr Drelle.

30. On 16 August 2023, Fancourt J granted Mr Drelle permission to appeal.

31. The appeal was heard by Richards J on 15 and 16 January 2024 (the "**First Appeal**").

32. By his judgment, which was handed down on 11 March 2024, Richards J dismissed the First Appeal: [2024] EWHC 521 (Ch); [2024] BPIR 496. (Page 185)

33. Richards J ordered that the Security be paid to ST's solicitors (who were at that time, Latham & Watkins (London) LLP) on or after 22 April 2024, unless the Court of Appeal ordered a stay.

34. On 27 March 2024, Mr Drelle issued an Appellant's Notice seeking permission to appeal the judgment of Richards J on the ground that he erred in holding that an unrecognised foreign judgment is a debt within the meaning of section 267(2)(b) of the Act (Ground 1).

35. Mr Drelle also raised further grounds of appeal in connection with his challenge to ICC Judge Burton's approach to the evidence and her overall conclusion that the Russian Judgment debt was not disputed on *bona fide* and substantial grounds. In summary, Mr Drelle contended that Richards J had applied the wrong standard of appellate review to the decision of ICC Judge Burton (Ground 2), and that he had adopted the wrong

approach to the witness evidence of Ms Zheglova (Ground 3) and to the expert evidence of Mr Kulkov and Mr Lough (Ground 4).

36. On 19 April 2024, Newey LJ granted Mr Drelle permission to appeal and ordered the Security to remain in Court pending determination of the appeal.

37. The hearing of the appeal took place on 11 and 12 December 2024 before Lords Justice Newey, Popplewell and Snowden (the "**Second Appeal**").

38. On 31 January 2025, judgment was handed down: [2025] EWCA Civ 62; [2025] 3 WLR 35; [2025] BPIR 564. The Second Appeal was upheld on the ground that a bankruptcy petition cannot be presented on the basis of an unrecognised foreign judgment (Ground 1). (Pages 129-153)

39. In view of the fact that Mr Drelle had succeeded under Ground 1 and because the Court of Appeal did not want to say anything which might prejudice the hearing of any recognition proceedings which ST might bring, the Court of Appeal did not decide Mr Drelle's remaining Grounds of Appeal (Grounds 2, 3 and 4) which essentially went to ICCJ Burton's and Richards J's treatment and assessment of the evidence before them, specifically the factual evidence of Ms Zheglova and the expert evidence of Mr Kulkov and Mr Lough.

40. At a consequentials hearing on 9 May 2025 ([2025] EWCA Civ 698; [2025] BPIR 1237), and attended also by Mr Drelle's Trustees in Bankruptcy, the Court of Appeal ordered (amongst other things) that:

(a) The Bankruptcy Order be set aside and the Petition be dismissed.

(b) The Trustees in Bankruptcy be removed from office forthwith and Mr Drelle's estate shall revert to him. (Pages 122-125)

(c) The Security be paid out to Mr Drelle to satisfy the order for costs made against ST (subject to permission or licence being granted by OFSI).

(d) ST's application for permission to appeal be refused.

(e) Pending ST's application to the Supreme Court for permission to appeal, (a) – (c) above be stayed.

The English Recognition Proceedings

41. On 22 April 2025, ST issued a Part 7 claim for recognition of the Russian Judgment Debt (the **"Part 7 Claim"**).

42. The Part 7 Claim has been served on Mr Drelle, but the parties have agreed to a stay until after the Supreme Court's determination.

Issues to be determined by the Supreme Court

43. The central issue on this appeal is whether the Court of Appeal was right to hold that a bankruptcy petition, founded on non-payment of a sum ordered by a foreign Court, cannot be presented under section 264 of the Insolvency Act 1986 where the foreign judgment has not been the subject of recognition proceedings in this jurisdiction. As part of that central issue, the Appellant has raised a number of arguments including a point (not raised in any of the lower courts) as to the effect (if any) of Article 13 of the Cross-Border Insolvency Regulations 2006.

44. If that central issue is determined in Mr Drelle's favour, then the Supreme Court will not need to determine the other issues on the appeal raised in paragraph 2 of Mr Drelle's Notice of Acknowledgment. Those issues go ultimately to the question of whether the petition is subject to a genuine and substantial dispute – the issue undecided and expressly left open by the Court of Appeal: see paragraph 39 above.

45. By contrast, if the Supreme Court decides the central issue in favour of ST, Mr Drelle seeks the dismissal of the appeal on the grounds and for the reasons set out in paragraph 2 of Mr Drelle's Notice of Acknowledgment: see paragraph 39 above.

For the Appellant:

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Clara Johnson

For the Respondent:

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Bláthnaid Breslin