A Review of Insolvency Appeals This Winter:
A cold start but some good news for judgment creditors

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1. Last week, the Supreme Court handed down *El-Husseiny v Invest Bank PSC* [2025] UKSC 4 (*"El-Husseiny"*). In its analysis the Supreme Court supported a "straightforward" and wide reading of Section 423 of the Insolvency Act 1986 ("the Insolvency Act"). The decision is likely to be welcomed by creditors who seek to pursue debtors who take steps to defeat creditor claims by entering into transactions which provide for the debtor to receive no consideration or less consideration than the debtor provides. This decision also marks a departure from recent Court of Appeal judgments which have, perhaps, provided less warmth to creditors seeking remedies against debtors in the insolvency context this winter.

2. This article considers (in summary form) two of those recent Court of Appeal decisions:

   2.1 *Manolete Partners Plc v White* [2024] EWCA Civ 1418 – the decision to set aside an order requiring a pension trustee to draw down from an occupational pension to satisfy a judgment debt.

   2.2 *Servis-Terminal LLC v Drelle* [2025] EWCA Civ 62 – the decision to dismiss a petition where the underlying foreign judgment relied upon had not been the subject of recognition proceedings.

3. This Article goes on to analyse the decision in *El-Husseiny*.

Injunctions; Third Party Debt Orders and Pension Rights: Manolete Partners Plc v White

4. *Manolete v White*, was the first decision to be handed down by the Court of Appeal in November 2024.

5. Mr White was the main director of Lloyds British Testing limited ("the Testing Company") and approximately 20 years ago became the sole member of an occupational pension scheme. The Testing Company eventually went into insolvent liquidation in 2017 and in

2022 Manolete obtained a judgment against Mr White for misfeasance in the sum of approximately £1 million.

6. In summary, at first instance, Manolete successfully applied for a mandatory injunction requiring the pension trustees to draw down sums from the pension. The court specifically directed the resultant payment be made into a certain bank account in Mr White's name to be notified in advance to Manolete. This hypothetically allowed for further enforcement including for example, a third-party debt order application.

7. The judge took into consideration decisions including *Bacci v Green* [2022] EWHC 486 (Ch) and *Blight v Brewster* [2012] EWHC 165 (Ch). The court's attention was drawn to Section 91 of the Pensions Act 1995 ("the Pension Act") but counsel for the Defendant did not argue it prevented the relief Manolete sought. The court was ultimately satisfied it was appropriate to exercise the court's discretion under Section 37 of the Senior Courts Act 1981.

8. In November 2024, the Court of Appeal allowed Mr White's appeal. In brief, the Court was persuaded with respect to Sections 91(1) and 91(2) of the Pension Act that: *"the intention is that a member's entitlement or right to future benefits under an occupational pension scheme should remain available to provide support to that member in retirement, so that, subject to specific exceptions, in the same way that such entitlement or rights should not to be capable of alienation by the member, they should also be immune from attachment to pay the claims of creditors"* .

9. The Court of Appeal went on to consider at paragraph 64 of the judgment, that Section 91(2) of Pension Act was drafted in terms that prohibited the making of an order which had "the effect of which" resulted in a member being restrained from receiving their pension: *"the wider formulation reinforces the view that the court should look at the substantive result that will follow from the order that it is being asked to make, in the real world context in which it is being asked to make it. The court should not simply focus on the form of the order in isolation".* Ultimately, the court considered that the order made was prohibited by Section 91(2) of the Pensions Act.

10. Lord Justice Green considered at paragraph 107 that the exercise of a discretion to bring about a result prohibited by statute was an illegitimate exercise of the power to grant injunctive relief.

11. This decision provides debtors with protection against attempts by judgment creditors to enforce against occupational pensions in the manner which was considered in this appeal.

Unrecognised foreign judgments and bankruptcy petitions: Servis-Terminal LLC v Drelle

12. More recently in February 2025, the Court of Appeal in *Servis-Terminal LLC v Drelle* set aside a bankruptcy order and dismissed a petition on the basis that the foreign judgment relied upon had not been the subject of recognition proceedings and therefore was not capable of providing a basis for a bankruptcy petition.

13. The basic facts in *Servis-Terminal LLC v Drelle* were that a court in Russia had found Mr Drelle liable to pay RUB 2 billion, for his failure to act in good faith or reasonably concerning a company which had been declared "bankrupt" (see paragraph 2 of the decision). The Petitioner relied on the following to present a bankruptcy petition in London: the judgment and the fact that Mr Drelle had unsuccessfully attempted to appeal the underlying decision in Russia. When the petition was heard, the court considered the debt claimed in the petition was not subject to a genuine and substantial dispute. Consequently, a bankruptcy order was granted.

14. On appeal, the court analysed Section 267 of the Insolvency Act and considered at paragraph 55 that: *"where there is no statutory provision to contrary effect, a bankruptcy petition cannot be presented in respect of a foreign judgment which has not been the subject of recognition proceedings. While an unrecognised judgment may be determinative for certain purposes, it will have "no direct operation" in this jurisdiction and so cannot be used as a "sword", whether as regards "direct execution" or as the basis of a bankruptcy petition. An obligation to make a payment imposed by an unrecognised foreign judgment is not enforceable as such in this jurisdiction and, in the eyes of the law of England and Wales, does not constitute a "debt" for the purposes of section 267(1) or section 267(2)(b) of the 1986 Act".*

15. This decision highlights the difficulties relying on foreign judgment debts to found bankruptcy petitions before any such judgment has been suitably recognised in England and Wales. Whilst that does not eliminate a creditor's ability to pursue foreign judgment debts in this jurisdiction, the appeal confirms that a creditor will need to do more now to be able to enforce the same through bankruptcy proceedings where the judgment is unregistered.

The Construction of Section 423: El-Husseiny

16. Last week, the Supreme Court heard an appeal concerning Section 423 of the Insolvency Act. For completeness it is noted that technically if the elements of the test are satisfied, this Section can be deployed in other types of proceedings, not just insolvency proceedings.

17. In terms of the background to this dispute, Invest Bank obtained judgment against Mr El-Husseini in Abu Dhabi for approximately £20 million. The underlying claim concerned guarantees Mr El-Husseini had given in respect of credit facilities granted by Invest Bank to his companies. The Bank looked to enforce the relevant judgment against assets in England and Wales. This included London property; shares and money. However, Invest Bank's position under Section 423 was that Mr El-Husseini arranged for these assets to be transferred to other people to put them beyond the reach of the bank or to reduce the value of the companies which owned them.

18. In its decision the Supreme Court highlighted an example of a transfer ("the Example Transfer") concerning 9 Hyde Park Garden Mews ("9 Hyde Park"):

    18.1 before 9 Hyde Park was transferred it was legally and beneficially owner by a Jersey Company ("the Company");

    18.2 Mr El-Husseini was the beneficial owner of all the shares in the Company;

    18.3 Mr El-Husseini arranged with one of his sons that he would cause the company to transfer legal and beneficial ownership of 9 Hyde Park to his son for no consideration; and

    18.4 subsequently, the disposal of beneficial and legal title occurred and the son did not pay any money or provide consideration in return for the disposal.

19. Mr El-Husseini argued that the transfer was not caught by Section 423 because he did not transfer any property that he personally owned. Whereas Invest Bank disagreed with such a narrow construction of Section 423: at the appeal Invest Bank argued this introduced a belt on the breadth of Section 423.

20. The Supreme Court dismissed the appeal, finding in Invest Bank's favour. The Court took into account a number of points in its analysis including:

20.1 a straightforward reading of Section 423 – Section 436 of the Insolvency Act defined a "transaction" for the purposes of the Insolvency Act as including *"a gift, agreement or arrangement and references to entering into a transaction shall be construed accordingly"*. By the legislature using the words *"arrangement"*, this introduced a *"broad"* definition of *"transaction"*. Alongside Section 436 of the Insolvency Act, a straightforward reading of Section 423 suggested that the Example Transfer (see above) fell within Section 423 and Mr El-Husseini was not required *himself* to dispose of property belonging to him. Mr El-Husseni had arranged with his son that he would procure the Company to transfer 9 Hyde Park to his son who would not pay a price or provide other consideration for the transfer. It was a notable part of Invest Bank's case that the Example Transfer had diminished the value of Mr El-Husseini's assets, namely the Company. The reduction to the value of shares or destruction of share value completely was capable of prejudicing a creditor's ability to enforce a judgment.

20.2 the Court was not persuaded by the Appellant's following arguments that Section 423 did not apply in this matter:

20.2.1 textual indicators within the wording of Sections 423 to 425 -

20.2.1.1 the court did not accept that the use of the word "otherwise" introducing the second limb of Section 423(1)(a) demonstrated that the transfer, must, like a gift, involve the transfer of a proprietary interest by the debtor. The wording of Section 423 did not suggest that "gift" governed the rest of the definition.

20.2.1.2 the court did not agree that Section 423 only made sense if the most proximate person is a person who received property owned by the debtor, even when taking into consideration the bona fide purchaser defence in Section 425(2) of the Insolvency Act.

20.2.2 the purpose that the regime was designed to achieve - the court considered the purpose of the sections to was to provide redress where transactions at an undervalue were entered into with the mental element identified in subsection 3. The Appellant's argument that Section 423 contained a restriction not expressly included in Section 423, undermined the purpose of Section 423.

20.2.3 the fraudulent transfer regime was intended to interrelate with Sections 238 to Sections 339 of the Insolvency Act and *Clarkson v Clarkson* [1994] BCC 921 demonstrated the Court of Appeal's interpretation was inconsistent with Invest Bank's construction of Section 423 - the Supreme Court distinguished *Clarkson v Clarkson* on its facts.

21. The Court concluded at paragraph 75 that *"the language of section 423(1) and the purpose of the section point clearly to the conclusion that a "transaction" within section 423(1) is not confined to a dealing with an asset owned by the debtor but extends to the type of transaction in this case, whereby the debtor enters into an arrangement under which a company owned by him or her transfers a valuable asset for no consideration or at an undervalue"*.

22. As set out above, this decision is likely to be welcome by insolvency practitioners; financial institutions and others who can now rely on Section 423 with some confidence that it may apply to more nuanced situations involving the use of corporate structures which hold assets. The judgment also provides useful analysis for insolvency specialists on the close relationship between Section 423, Section 238 and Section 339 of the Insolvency Act (consider paragraphs 61 – 74 in particular). It may be that Section 423 is more frequently deployed in the alternative to applications concerning transactions at an undervalue (in both the personal and corporate contexts) following this decision.

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