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Windhorst v Levy. The High Court on the narrow window to refuse a Member State judgment under Brussels Ia, which subsequently got caught up in insolvency.

Update 2 December 2021 The Court of Appeal today, Windhorst v Levy [2021] EWCA Civ 1802, rejected the appeal, albeit with one variation. A stay of execution was granted, subject to a payment of security, pending the outcome of the German proceedings.

Windhorst v Levy [2021] EWHC 1168 (QB) has been in my in-tray a little while. The court was asked to consider whether registration of a German judgment under Brussels Ia should be set aside when the judgment debt in question was subsequently included within a binding insolvency plan, which is to be recognized in E&W pursuant to the European Insolvency Regulation – EIR 1346/2000 (not materially different on this point to the EIR 2015). Precedent referred to includes Percival v Moto Novu LLC.

Appellant argues the registration order should be set aside as the initial 2003 judgment is no longer enforceable, having been waived as part of a binding insolvency plan, which came into effect by order of a German court on 31 August 2007 ("the Insolvency Plan"), and which this court is bound to recognize under the Insolvency Regulation.

In CJEU C-267/97 Coursier v Fortis Bank SA (held before the adoption of the EIR) it was held that enforceability of a judgment in the state of origin is a precondition for its enforcement in the state in which enforcement is sought. However that judgment then at length discussed what 'enforceability' means, leading to the Court holding that it refers solely to the enforceability, in formal terms, of foreign decisions and not to the circumstances in which such decisions may in practice be executed in the State of origin. This does not require proof of practical enforceability. The CJEU left it to 'the court of the State in which enforcement is sought, in appeal proceedings brought under [(now) Brussels Ia], to determine, in accordance with its domestic law including the rules of private international law, the legal effects of a decision given in the State of origin in relation to a court-supervised liquidation.'

The respondent contends that, applying the test laid down in Coursier v Fortis, the 2003 Judgment plainly remains enforceable in formal terms under German law.

The judge, at 52 ff, refers ia to CJEU Prism Investments and Salzgitter to emphasise the very narrow window for refusal of recognition, and holds [56] that the German judgment clearly is still formally enforceable in Germany (where enforcement is nota bene only temporarily stayed pending appeal proceedings). The effects of the German insolvency plan, under German law, are not such that the 2003 judgment has become unenforceable [58].

The request for a stay of execution is also denied, seeing as the appellant chose not to pursue a means available to it under German law and before the German courts, to seek a stay (it would have required it to put down the equivalent sum as court security).

Geert.

EU Private International Law, 3rd ed. 2021, 2.560 ff, 5.141 ff.

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> Brussels I (not Ia; no material difference), Insolvency Regulation EIR
> Whether registration of DE judment should be set aside when debt subsequently included in #insolvency plan, to be recognized under EIR
> Windhorst v Levy [2021] EWHC 1168 (QB) (6 05 2021)
> bailii.org/ew/cases/EWHC/…
>
> 2:03 PM · May 7, 2021

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BIA, BRUSSELS IA, EIR 2000, EIR 2015, HTTPS://WWW.BAILII.ORG/EW/CASES/EWCA/CIV/2021/1802.HTML, HTTPS://WWW.BAILII.ORG/EW/CASES/EWHC/QB/2021/1168.HTML, INSOLVENCY, RECOGNITION AND ENFORCEMENT, REGULATION 1215/2012, REGULATION 1346/2000, WINDHORST V LEVY, [2021] EWCA CIV 1802, [2021] EWHC 1168 (QB)