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Ashurst v Pollard

Also known as: Pollard v Ashurst



Positive/Neutral Judicial Consideration

Court

Chancery Division

Judgment Date

3 February 2000

Where Reported

[2000] 2 All E.R. 772

[2000] 2 WLUK 154

[2001] I.L.Pr. 7

[2000] B.P.I.R. 347

[2000] 2 E.G.L.R. 29

[2000] 24 E.G. 171

[2000] E.G. 18 (C.S.)

[2000] N.P.C. 11

Times, March 16, 2000

[2000] C.L.Y. 3490

Subject

Insolvency

Other related subjects

European Union

Keywords

European Community; Jurisdiction; Real property; Trustees in bankruptcy

Judge

[Jacob J](#)

Counsel

For P: Sebastian Prentis.

For A: Raana Sheikh.

Solicitor

For P: Harkavys.

For A: Lita Gale.

Case Digest

Summary

P, a bankrupt, appealed against an order granting A, his trustee in bankruptcy, vacant possession and the conduct of sale of a property in Portugal jointly owned by P and another on the basis that the proceedings were concerned with rights in rem, namely the transfer of title to foreign property, in respect of which the English court had no jurisdiction to make an order for possession or sale. It was held that an English court was not barred from enforcing an English trust over land held abroad by means of an order in personam.(\SCO

Abstract

A, acting as a trustee in bankruptcy for P, was granted an order in the district court granting him vacant possession and the conduct of the sale of a property in Portugal, which was jointly owned by P and another. P appealed against the order, contending that the proceedings brought by the trustee were concerned with rights in rem, namely the transfer of title to Portuguese property, and the English court lacked jurisdiction to grant an order for possession or sale of the property. It was submitted that the Brussels Convention 1968 Art.16(1) required the trustee to go to the Portuguese courts for such an order.

Held, dismissing the appeal, that where land held abroad was subject to an English trust it was within the jurisdiction of an English court to enforce that trust by way of an order in personam, *Webb v Webb (C-294/92) EU:C:1994:193, [1994] Q.B. 696, [1994] 5 WLUK 207* applied. The second part of the order obliging the joint owners to concur in the sale of the property and, give A vacant possession could have been better expressed as an obligation to sell the property at the best price reasonably obtainable or to convey the property to A.