# When Russian law determines ownership of English family home

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**CATEGORY:**
ARTICLE

On 1 May 2013 the Court of Appeal handed down its judgment in the case of *Slutsker v Haron* [2013] EWCA Civ 430.

Proceedings were brought by Mr Slutsker against Haron Investments Ltd ('Haron') and Summit Trustees (Cayman) Ltd ('Summit'), a Cayman trustee, in respect of a London property purchased in late 2000 for £6m (now worth circa £40m) as a family home for his wife and children.

Mr and Mrs Slutsker were divorced in Russia but Mr Slutsker brought his claim in respect of the London property to the English Court. We can of course only assume that the Russian Court was unwilling to deal with the overseas property, and that, given the wealth in the case, a needs-based claim for potential provision after an overseas divorce (under Part III of the Matrimonial and Family Proceedings Act 1984) was not going to be relevant. Mr Slutsker's case was therefore a pure 'property' law case. Had there been divorce (or Part III) proceedings in England, the question for the Court would have been quite different and issues of beneficial ownership and variation of settlements may well have come to the fore under English family law statutes.

The property was purchased using funds held in Switzerland in Mrs Slutsker's name. Contracts were exchanged in the name of Mrs Slutsker, but on advice, and for tax reasons, the ownership of the property was registered in the name of Haron (an English company), who declared that it held it as nominee for Mrs Slutsker. Haron subsequently declared that it held the property on trust for Summit, the trustees of the newly established Misha Trust. The beneficiaries of the Trust were Mr and Mrs Slutsker and their minor children. In 2009 (when the marriage broke down), the trustees executed a discretionary power to exclude Mr Slutsker as a potential beneficiary.

The fundamental question for the English Court was whether Mr Slutsker was entitled to a 50% share in the property and whether English law should apply to determine the issue.

Mr Slutsker argued that the Russian matrimonial property regime applied to the purchase monies, and this imposed the 'default-by-law' regime of joint ownership, given that no marriage contract electing separate property had been entered into. His case was that, although legal ownership was registered in the name of the company, the funds used to purchase the property belonged to the parties jointly (in equal shares). He then argued that English law principles should apply and that his interest in the funds should be traced into a 50% interest in the property, on a resulting trust basis. This was, he said, akin to the English law concept of a 'beneficial tenancy in common'.

The position in English law has never been clear (as acknowledged by the Court of Appeal) as to whether the law of the matrimonial domicile (Russia) or the law of the lex situs (England) should apply as regards immovable property. However, for the purposes of the present litigation, the Court was content to decide the case on the same basis as the judge at first instance, and that Russian law, as the law of the matrimonial domicile, was to apply to the question of ownership between husband and wife.

In particular, Russian law was to apply through all the stages of the relevant history. The Court gave short shrift to Mr Slutsker's attempts to translate the parties' Russian law rights (in the funds) into English law rights (in the property); it would not apply a hybrid of English and Russian law. If Russian law afforded Mr Slutsker a right in the property, such right would be recognised in England, but not otherwise.

Under Russian law, Mrs Slutsker was entitled to dispose of the (joint) funds, there being an automatic presumption that the disposition of joint property was undertaken on the basis of mutual consent. Whilst it was open to Mr Slutsker to seek to set aside the transaction, he failed to do so within the Russian statutory limitation period.

Mr Slutsker asserted that he was unable to provide his consent to the disposition of funds and the ultimate transfer of the property to Summit because he had insufficient knowledge of the transactions, and that, in any event, the burden was on Summit to show that he had provided consent. The Court found it clear on the facts that Mr Slutsker had been included in the decision-making process and that he understood that the purchase of a property in Trust fell outside the scope of Russian law. The burden of proof was not on Summit, but on Mr Slutsker, who failed to demonstrate lack of consent. The use of a Trust structure (unknown and unrecognised in Russian law) was the critical factor, and whether he was aware of the fact that the trustees could exclude him was a matter of 'degree, not kind'.

The outcome was straightforward. The beneficial interest in the property never became an asset subject to the Russian family property regime. It was held that Mrs Slutsker had made an effective disposition, under Russian law, of joint family property, to which Mr Slutsker had consented. Russian law and would not recognise the existence of a separate beneficial interest.

Was the outcome unjust for Mr Slutsker? Mrs Slutsker's team asserted that this was a man who had political ambitions in Russia which would potentially require him to provide disclosure of assets. He had deliberately acquiesced in a transaction which fell outside the scope of Russian law

and he could not then argue that Russian law should afford him protection in these circumstances.

This landmark decision is a warning to those from abroad who hold immovable property in England. Acquiring a property in this country will not necessarily mean that English law principles will rule at the expense of the law of the matrimonial domicile as between husband and wife where there has been a divorce in that jurisdiction. The Court of Appeal has made it clear that it will be prepared to apply foreign law in such circumstances. This could be particularly relevant to any individual subject to a community property regime in their home country.

However, holding a property through a complex foreign structure or trust (where both spouses have acquiesced) may well put the property out of reach of a foreign spouse, where such a structure is unrecognised by the divorce laws of the matrimonial domicile. For some, there may be real advantages in doing this.