

U.K. Top Court Announced It Will Not Recognize U.S. Bankruptcy Judgments

by Joel R. Glucksman on November 6, 2012

The United Kingdom's Supreme Court has ruled that for the first time in history, it would not recognize decisions by the United States bankruptcy courts against debtor companies that fail to appear in court to defend themselves.

The case in question revolved around a \$10 million default judgment from the bankruptcy courts in New York against Eurofinance SA, a distressed company located in the British Virgin Islands. When the trustee for Eurofinance sought to enforce the New York judgment in England, the High Court denied the request.

Under English common law, the court cited four requirements for the U.K. to enforce a foreign country judgment. To be valid, the enforcing party must demonstrate to the U.K. court that the judgment debtor: 1) was present in the foreign jurisdiction at the time proceedings were instituted, 2) was the claimant or counter-claimant in the foreign proceedings, 3) had submitted to the foreign proceedings by voluntarily appearing or, 4) had submitted to the foreign proceedings by agreement.

The High Court argued that to recognize default judgments from the U.S. and other countries in Britain would harm domestic business, according to Bloomberg News. The court also noted that to do so would constitute a deviation from existing bankruptcy law.

The ruling may have long-reaching implications in separate U.S. court proceedings, such as those surrounding the ongoing Bernard Madoff Ponzi scheme. Madoff trustee Irving Picard previously filed documents in Britain urging the court to recognize three New York bankruptcy court rulings amounting to \$1.25 billion. These were obtained by Picard in cases against defendants in Gibraltar and the Cayman Islands, both of which are impacted by U.K. law, Bloomberg explains. Currently, the U.K. High Court has not made any rulings relating to the Madoff cases.