

THE REVIEW OF
**BANKING & FINANCIAL
SERVICES**
A PERIODIC REVIEW OF SPECIAL LEGAL DEVELOPMENTS
AFFECTING LENDING AND OTHER FINANCIAL INSTITUTIONS

Vol. 39 No. 2 February 2023

LET'S GET PERSONAL: THE LIMITATIONS OF *IN REM* JURISDICTION OF THE US BANKRUPTCY COURTS

In this article, the author discusses the extraterritorial in rem jurisdiction of US Bankruptcy Courts, citing many cases. He then focuses on the Seventh Circuit's decision in the Sheehan case. In that case, the Court of Appeals held that despite a bankruptcy court's in rem jurisdiction over the debtor's property in Ireland, the prohibition on collection attempts abroad could not be enforced, since the US courts did not have personal jurisdiction over the person holding the property.

By Lynn P. Harrison III *

The issue of the extraterritorial reach of US laws has received extensive focus in recent years given the globalization of the world's economy. Despite the presumption against the extraterritorial application of US laws generally, the clear intent of the US Bankruptcy Code is that it should apply extraterritorially.¹ It is has

been widely accepted that a US bankruptcy court has *in rem* jurisdiction over a debtor's property worldwide² and

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using § 550(a), regardless of where any initial or subsequent transferee is located"), *cert. denied sub nom. HSBC Holdings PLC v. Picard*, 140 S. Ct. 2824 (2020); *French v. Liebman (In re French)*, 440 F.3d 145, 152 (4th Cir. 2006) (finding that the presumption against extraterritoriality does not prevent application of 11 U.S.C. § 548 to prevent a fraudulent transfer of Bahamian property).

¹ *In re Simon*, 153 F.3d 991, 996 (9th Cir. 1998). Some courts reached this conclusion by finding a "clear expression of intent by Congress in the express language of the Bankruptcy Code," *see, e.g., id.*, while others concluded that its language "is ambiguous regarding its possible extraterritorial effect" but that "[t]he legislative history, however, is not ambiguous;" *see, e.g., Thurmond v. Rajapakse (In re Rajapakse)*, 346 B.R. 233, 235-36 (Bankr. N.D. Ga. 2005); *In re Picard*, 917 F.3d 85, 100 (2d Cir. 2019) (holding that neither the presumption against extraterritoriality nor international comity "prohibit[s] [a] debtor's trustee from recovering [bankruptcy estate] property

² "*In rem*" is Latin for "against a thing," and "concern[s] the status of a particular piece of property." Legal Information Institute, https://www.law.cornell.edu/wex/in_rem. That particular piece of property — or, in bankruptcy, the "property of the estate" more generally — is the "*res*." Regarding *in rem* jurisdiction, *see also Tenn. Student Assistance Corp. v. Hood*, 541 U.S. 440, 447 ("Bankruptcy courts have exclusive jurisdiction over a debtor's property, wherever located, and over the estate." (citing

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