

Dispute Resolution
Case Law Update
Rosling King LLP



In this case, the Court of Appeal dismissed the Claimant's appeal and upheld the decision that LPA Receivers do not owe a duty of care to a mortgagor once they have been made bankrupt.

Facts and the Decision at First Instance

In 2001, the Claimant purchased a residential property on a buy-to-let basis. The property was subsequently re-mortgaged to the Bank of Scotland, with the loan being secured by way of a first legal charge. In 2009, the Claimant fell into arrears with the mortgage payments and subsequently the Bank of Scotland appointed the Second and Third Defendants as LPA Receivers ("the Receivers"). In March 2009, the Receivers informed the Claimant that they had obtained their own building insurance policy and, as such, the Claimant should cancel his insurance policy, which he duly did.

On 9 September 2009, a bankruptcy order was made against the Claimant. Later that month, the Claimant visited the property and discovered a leak that had resulted in significant damage. The Claimant informed the Receivers of the damage on the same day, however the Receivers did not take any action in relation to the leak.

It was accepted at trial that the insurance policy would have contained a condition requiring any claims under the policy to be made promptly. The Judge also noted that the damage from the leak would have been covered by the insurance, had the claim been notified.

In April 2010, the Receivers' appointment was terminated and in April 2011 the Claimant was discharged from bankruptcy. In his evidence, the Claimant submitted that he carried out repairs to the property at his own expense, which were completed in May 2011. In August 2011, the property was transferred back to the Claimant from his trustee-in-bankruptcy.

Proceedings were issued by the Claimant against the Receivers in 2013. The Claimant was seeking damages for breach of duty in the amount spent on the repair of the property. The First Defendant (Countrywide Residential Lettings Limited, who employed the Receivers at the relevant time) was alleged to be vicariously liable for the Receivers' breach of duty.

The breach complained of by the Claimant was that the Receivers failed to submit a claim under their insurance policy in a timely manner for the damage caused by the leak. He also submitted that the Receivers would have been obliged, or would have been authorised by the bank, to use the money received in order to repair the property, and the Claimant would therefore have avoided the need to do so at his own expense.

The claim was dismissed on two grounds. The first, and primary reason for dismissal of the claim, was that the Receivers did not owe a duty of care to the Claimant following the bankruptcy order in 2009. As such, the Claimant had no cause of action under which he could bring the claim. Second, the Judge held that, as the repairs were carried out by the Claimant before the property had been transferred back to him, the repairs had been carried out voluntarily without agreement from the trustee-in-bankruptcy. Accordingly, the Receivers had not caused the loss.

The Appeal

The Claimant appealed the High Court's decision and submitted that the vesting of the title of the property in the trustee-in-bankruptcy did not deprive him of his legal status as mortgagor. He submitted that a mortgagor remained liable under the mortgage during the period of his bankruptcy, and although the debt and interest were provable in the bankruptcy, they continued as liabilities until his discharge.

The Appeal was dismissed on the following grounds:

- (1) The Court of Appeal considered a number of authorities and concluded that an LPA Receiver owed a duty of care to the mortgagor only if, and to the extent that, he retained an interest in the equity of redemption. The Court held that the Judge was therefore correct to dismiss the claim in the first instance on the basis that any duty owed by the Receivers, in relation to the insurance claim, was owed exclusively to the trustee-in-bankruptcy, and not to the Claimant.
- (2) With respect to causation, the Court opined that in order for the claim to succeed it would have been necessary for the Claimant to establish that, but for the breach of duty, the property would have been repaired. The Court held that there was no evidence available to show that the bank would have directed the Receivers to spend any of the insurance money on repairs, as opposed to reducing the mortgage liabilities. In fact, they held that it was likely that, in the circumstances, the Bank would have sought to reduce its exposure, as opposed to complete the repairs.

Commentary

Whilst this case does not make new law, it does serve as a welcome reminder for lenders and LPA Receivers as to the duties, and scope of duties, owed to a mortgagor when, and if, a bankruptcy order is made.

For further information, please contact [Rebecca Sharpe](#) or the Partner with whom you usually deal.