

Real Estate
Real Estate Case Law Update
Rosling King LLP



The Facts

The application relates to the estate of Jillian Mascall (the “**Deceased**”), which owned around 27 properties. The Deceased died on 4 December 2014 and it later became apparent the estate was insolvent.

On 22 December 2015, Mr Sleight (the “**Applicant**”) was appointed trustee in bankruptcy of the estate. In February 2016, 24 of the properties appeared to be in negative equity as well as being subject to tenancies with ongoing obligations on the landlord. Receivers had been appointed on a number of these properties. The Applicant disclaimed the vast majority of these as “onerous property” in May 2016. The application concerns two of those properties, 32 Mexborough Grove, Leeds (the “**MG Property**”) and 16 Clark Road, Leeds (the “**CR Property**”) (together the “**Properties**”).

In March 2018, the MG Property was sold by the mortgagee in possession, Bank of Scotland (“**BOS**”). Having discharged the debts due and costs of sale, there was a remaining surplus of £17,924.96.

In May 2018, the CR Property was sold by the mortgagee in possession, BOS (Birmingham Midshires Division). Having discharged the debts due and costs of sale, there was a remaining surplus of £1,057.08.

The Issue

The Court considered whether the Applicant had standing to apply for a vesting order as “a person who claims an interest in the disclaimed property” under section 320(2)(a) of the Insolvency Act 1986.

The Judgment

The Court held that the Applicant would only have standing if he had a proprietary interest in that property. As the Applicant had no proprietary interest, and there was no other interested party (the insolvent was deceased and the purchasers of the Properties were not involved in the application), the surplus proceeds from the sale would be paid into Court.

The Court considered that the Crown was prima facie entitled to the surplus, but the Crown and the mortgagee were unwilling to assert a claim to the surplus. This meant that the funds would “languish...for an indefinite period”.

The Court considered this to be unsatisfactory as, had the mortgagee applied for a vesting order in relation to the Properties (instead of selling them by enforcing its security interest) the Court could have ordered any surplus from the sale to be paid to the trustee for the benefit of creditors. However, the Court could not order this on the trustee's own application.

Comment

This is another case in recent months in which the need for an existing proprietary interest



has defeated a claim for a vesting order. This decision also highlights the practical impact of the fact that the Crown Estate will not engage with applications for vesting orders for property without a legal heir, in case it risks incurring liability in relation to that property.

Given the unlikelihood of any imminent change to either the legislation or practice in this area, insolvency office holders should continue to exercise due caution before disclaiming property that may have the potential to be sold at a surplus for creditors.

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