Real Estate

Real Estate Case Law Update

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The Facts

Mr Kuldip Singh Birdi was made bankrupt in March 2012, on the Petition of HMRC. Three Applicants (the "**Applicants**") to these proceedings had all submitted proofs of debt as creditors in Mr Birdi's bankruptcy. Together, their claims total £189,983.

The First Respondent in these proceedings, Mr Price, was appointed as Mr Birdi's Trustee in Bankruptcy at a meeting of creditors held in July 2012. In January 2014, Mr Price retired from practice and was removed as Trustee and the Second Respondent, Mr Pettit was appointed in his place.

The process of realising the bankrupt's estate has been a long and difficult one. The latest annual report showed total asset realisations of £595,053, however associated costs and distributions totalled £556,827, leaving an available total of £38,225. A total of 26 unsecured creditors had claims totalling £985,552, and in addition HMRC has a claim for £62,821, giving a total of £1,048,373. It follows the estate is insolvent and no distributions will be made to the 26 creditors.

In August 2018, one of the Applicants sent a letter to Mr Price and Mr Pettit which purported to give notice to Mr Pettit under s.298 Insolvency Act 1986 ("**IA**") requiring Mr Pettit to convene a meeting of creditors within 21 days to sanction removing himself as Trustee. The other Applicants sent similar letters in the weeks following. The Applicants also complained that the length and difficulty of the process and resulting cost is the fault of the two trustees, Mr Price and Mr Pettit, alleging wrongdoing to get appointed and in distributing funds.

The Issues in Law

The Court considered two main issues: -

1. Should an Order be made removing Mr Pettit as Trustee?
2. Should an Order be made requiring Mr Pettit to convene a creditors meeting?

The Court held the starting point for dealing with these questions was section 298 IA, which states the trustee of a bankrupt's estate may be removed from office only (i) by an order of Court; or (ii) by a decision of the bankrupt's creditors instigated specially for that purpose in accordance with the rules.

In respect of the first issue, the Court considered case law which detailed that the Court does not lightly remove its own officer as it may encourage disgruntled creditors to affect the insolvency process as a whole. On the other hand, liquidators must act in an efficient and unbiased manner.

In respect of the second issue, the Court considered whether the creditor's requisition was effective under s.298 IA and rule 15 of the Insolvency (England and Wales) Rules 2016 ("**IR**").

The Judgment

On the first issue, the Court found no proper basis for the Applicants' complaints. No one had complained throughout the bankruptcy process until the matter was to come to Court on a related issue. Even if, as alleged, the Applicants had not seen any Annual Progress Reports, they could have made enquiries of their own before now. Further, it seemed that Mr Birdi, with the assistance of others, had gone to extraordinary lengths to complicate and prolong the administration of his bankrupt estate and this could not be placed at the fault of the Trustees.

On the second issue, the Court held the creditor's requisition was defective and the Trustee was under no requirement to convene the meeting. This was because:

- The convening creditor and purported concurring creditors represented less that one quarter in value of the creditors required under s. 298(4) IA (at approximately 18%);
- The convening creditor had merely stated the concurrence of creditors rather than evidencing it as required under rule 15.18 IR; and
- The convening creditor had failed to provide security for the associated costs of that meeting as requested by the Trustee under 15.19 IR.

In any case, the Court used the cases of *Re Barings Plc (in Liquidation) (No. 1) [2001] 6 WLUK* and *Manga Properties Ltd v Brittain [2009] EWHC 157 (Ch)* to declare that even if the above procedure had been carried out correctly, the Court should intervene and override that obligation as it held it could not see any practical utility in forcing a change of trustee at such a late stage when in reality nothing was left to distribute and there was no replacement trustee available to appoint.

Comment

The Court used decisions in case law which had applied to liquidations predating the IR and are therefore of interest. However, in this case there were no funds available to distribute and the allegations were found to be baseless and therefore there may be scope to distinguish the Court's approach going forward.

For more information, please contact Alexander Edwards or the partner whom you normally deal with.