

Development law

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Pre-completion searches and the effect of bankruptcy

Pre-completion searches are arguably one of the most important steps in a conveyancing transaction whether residential or commercial.

An official search of the register with priority is key for the following reasons:

- 1 The buyer's solicitor can check that the title has not changed since the date of the official copies supplied at the start of the transaction; and
- 2 The priority period afforded by the search result protects the buyer as their interest will take priority over any other subsequent application to register an interest by a third party.

If the transaction goes wrong (i.e. a buyer takes a property subject to a charge it knew nothing about) at the fault of the solicitor either forgetting to carry out the search or renew it once the priority period has expired, they are likely to face a negligence claim.

Pick v Chief Land Registrar¹, a case relating to a sale by a bankrupt, raises questions about how useful priority periods are in practice.

The Facts

The transferor (A), was the sole registered proprietor of a property in London and was adjudged bankrupt in March 2007. The Official Receiver was a trustee (the claimant). Despite being bankrupt, A transferred the property to B in November 2007.

B's application to register the property was not made within the priority period and by the time the application was submitted, a bankruptcy restriction had been entered against the title. Notwithstanding this, the Land Registrar (the defendant) entered B as the registered proprietor of the property and cancelled the bankruptcy restriction.

Legal principles

The two conflicting legal principles involved in the case are contained in the Insolvency Act 1986 ("IA") and the Land Registration Act 2002 ("LRA"). The former says that the estate of the bankrupt vests in the trustee in

bankruptcy (s306) which takes effect without having to register the trustee's interest at the Land Registry. The latter's position is that regardless of whether the transferor is bankrupt, if a buyer has no notice of the bankruptcy and is a purchaser for value, they may purchase from a bankrupt who technically no longer owns the property under the IA (see section 86(5) LRA).

Decision

The court had to consider whether s86(5) of the LRA cancelled out the principles of the IA in this situation. The claimant argued that s86(5) did not apply because B had not met the requirements of s86(6) by registering her interest before the bankruptcy restriction was entered on the title. She also argued that B was not unfairly prejudiced as B could have applied to register the transfer in the priority period and would have gained title free of the bankruptcy restriction.

The High Court ruled that the defendant was correct in disapplying the bankruptcy restriction on the basis that s85(5) applied and protected B. It was decided that the focus of the wording of s86(5) was on the time of the disposition, rather than the time of registration. In addition, s86(6) does not specify a date by which the relevant registration requirements have to be met.

The Court said that the protection given by s86(5) only takes effect in favour of a proprietor who becomes registered to ensure that it only extends to persons who are entitled to be registered.



Comment

The decision here is weighted in favour of a bona fide purchaser as opposed to an unsecured creditor even though the registration application was not made within the priority period. One must question of what use was an official search in this instance as the decision was made in the purchaser's favour regardless. Of course if the purchaser had made the application in the priority period, this would have eliminated a fundamental part of the claimant's argument.

Although this case is perhaps an anomaly as it involves insolvency law, it highlights the importance of registering restrictions promptly and does not take away from the fact that pre-completion searches are vital.



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1 Link to judgment: [Pick v Chief Land Registrar \[2011\] EWHC 206 \(Ch\) \(21 January 2011\)](#)