

## **Court of Appeal clarifies requirement that Trustee in Bankruptcy must act within 3 years of the bankruptcy in relation to bankrupt's home**

### **Eric John Stonham (Trustee in Bankruptcy of Sebastian Satyanard Ramrattan) v Sebastian Satanyard Ramrattan and Anna Bortolussi (2011) EWCA Civ 119 Court of Appeal: Rix, Longmore & Lloyd LJJ**

#### **Background**

This case concerned R's beneficial interest in a residential property in London. The property had been purchased and registered in the sole name of R in August 1987. In September 1990, R apparently transferred the property into the sole name of B, his wife, by way of gift. She became the sole registered proprietor.

The transfer was expressed to be made in consideration of R's natural love and affection for B. However, at a late stage in the proceedings, R admitted that he had forged the signatures of B and the two alleged witnesses to the transfer. Accordingly, the transfer had no legal effect and B had no beneficial interest in the property. The legal estate was, however, vested in B in consequence of her registration as proprietor.

A bankruptcy order was made against R in October 1995. S was appointed as trustee in December 1995. S's solicitors wrote to B in April 1997 indicating that S intended to apply to set aside the transfer. However, no application was made. In September 2004, the trustee's new solicitors made a similar threat. Once again, however, no application was made. In the event it was not until September 2007 that the trustee applied to set aside the transfer.

With effect from 1 April 2004 the Enterprise Act 2002 amended the Insolvency Act 1986 so as to provide that, in most instances, a trustee in bankruptcy has three years from the date of the bankruptcy to decide what to do with regard to the bankrupt's interest in a house which is the bankrupt's home. The present case was complicated by the fact that the transitional provisions introduced under the Enterprise Act applied.

The trustee's case was that the transfer to B ought to be set aside under Section 339 of the Insolvency Act 1986.

#### **The bankrupt's case**

Against the background of the statutory changes, the submission on behalf of R was that his interest in the property ceased to be part of the bankrupt estate after three years had elapsed from the date when the 2002 Act came into force and became vested in R under Section 283A of the Insolvency Act 1986.

Section 283A(2) provides:

"At the end of the period of three years beginning with the date of the bankruptcy the interest mentioned in subsection (1) shall:

- (a) cease to be conflicts in the bankrupt's estate, and
- (b) vest in the bankrupt (without conveyance, assignment or transfer)

Section 283A provides:

"Subsection (2) shall not apply if during the period mentioned in that subsection

- (a) the trustee realises the interest.....
- (b) the trustee applies for an order for sale .....
- (c) the trustee applies for an order for possession .....
- (d) the trustee applies for an order under section 313 .....
- (e) the trustee and he bankrupt agree that the bankrupt shall incur a specified liability to his estate .... in consideration of which the interest ... shall cease to form part of the estate."

A problem for R arose from Section 283A(5) which provides:

"If the bankrupt does not inform the trustee or the official receiver of his interest in a property before the end of the period of three months beginning with the date of the bankruptcy, the period of three years .....

(a) shall not begin with the date of the bankruptcy, but

(b) shall begin with the date on which the trustee or official receiver becomes aware of the bankrupt's interest."

R had not informed the trustee of his interest in the property. Until R belatedly admitted the truth, his position had been that B was the sole legal and beneficial owner of the property? The critical question, therefore, was when the trustee became aware of R's interest.

Counsel for R submitted that a trustee became aware of an interest in property as soon as he had reason to suppose that there may be a viable claim to recover the property for the benefit of the estate. In this case it was said that the trustee was in that position in 1997, not least because R's transfer to B was for no monetary consideration. Accordingly, it was submitted that the trustee was aware of the position by 2004 and that under the transitional provisions, the three year period expired on 1 April 2007.

In making these submissions, R's Counsel accepted and asserted as part of R's case that it was necessary to show that property recovered under Section 339 was treated as property belonging to the bankrupt at the commencement of the bankruptcy. He sought to achieve this by reliance on the statutory definition of the bankruptcy estate. See: Insolvency Act 1986 Section 283(1)(b).

Lloyd LJ rejected these submissions and concluded as follows:

*"The interest that section 283A(1) is concerned with is an interest which is part of the bankrupt's estate because it was vested in the bankrupt at the commencement of the bankruptcy. It does not include an interest in property which is currently vested in a third party even if it might be recovered for the benefit of the estate by proceedings under Section 339 or some similar provisions, however plausible and apparently strong the claim may be. Correspondingly, in my judgment, the trustee in bankruptcy does not become aware of such an interest for the purposes of Section 283A(5) unless the interest of which he becomes aware is an interest which is already vested in the bankrupt estate because it was vested in the bankrupt at the commencement of the bankruptcy."*

## **Comment**

It would have been a rather fortunate outcome if R had succeeded in this case: until admitting the forgery at the hearing before the Registrar, R's case had been that he had no interest at all in the property. Naturally his position was always vulnerable to an application under Section 339 in any event because of the absence of any monetary consideration for the transfer to B. Quite why the trustee did not act before he did is not clear. However, the Court of Appeal has now made it clear that the 3 year period will not start to run against trustees where the relevant interest remains to be recovered for the benefit of the bankrupt estate. This is the position even where, as in this case, there are obvious grounds for the trustee to make an application to recover the property. This seems to be entirely fair (and consistent with the policy underlying bankruptcy legislation) given bankrupt's obligation to disclose his interests in property from the outset. It is also consistent with the fact that the limitation period for the bringing of a claim under Section 339 and similar statutory provisions is 12 years.