



IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION (IN BANKRUPTCY)
BIRMINGHAM DISTRICT REGISTRY
[2015] EWHC 2219 (Ch)

No. 8276/2013

Priory Courts, 33 Bull Street
Birmingham

Monday, 1st June 2015

Before:

HIS HONOUR JUDGE PURLE, QC

B E T W E E N:

(1) MARK SANDS
(2) ANDREW APPLEYARD
(Trustee in Bankruptcy of Tarlochan Singh)

Applicants

- and -

(1) TARLOCHAN SINGH
(2) CHANAN SINGH THANDI
(3) SUSAN KAUR
(4) RAMANDEEP KAUR
(5) JK (A Child)
(6) KK (A Child)

Respondents

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5 Chancery Lane, London EC4A 1BL
Tel: 020 7831 5627 Fax: 020 7831 7737
info@beverleynunnery.com*

J U D G M E N T

(As approved by the Judge)

APPEARANCES

MR. J. DE WAAL QC (instructed by Wright Hassall) appeared on behalf of Mr. Sands and Mr. Appleyard (Trustees in Bankruptcy).

MR. J. CURL (instructed by Dent Abrams) appeared on behalf of Tarlochan Singh, Chanan Singh Thandi and Susan Kaur.

MISS. L. PEMBERTON (instructed by Barker Gooch and Swailes) appeared on behalf of Ramandeep Kaur, JK (a child) and KK (a child).

JUDGE PURLE:

1 This is the trial of a preliminary issue. The preliminary issue in essence is whether or not the applicant trustees in bankruptcy of Mr. Tarlochan Singh (“the bankrupt”) have lost all their rights under the provisions of s. 283A of the Insolvency Act 1986 (“the Act”) to a particular property. The property was at the date of the bankruptcy registered in the bankrupt’s name. It was then and still is the sole or principal residence of the bankrupt’s former wife.

2 S. 283A(1) provides:

“This section applies where property comprised in the bankrupt’s estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of –
(a) the bankrupt, or
(b) the bankrupt’s spouse or civil partner, or
(c) a former spouse or former civil partner of the bankrupt.”

3 It is further provided by s. 283A(2):

“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 comprised in the bankrupt’s estate, and
(b) vest in the bankrupt (without conveyance, assignment or transfer).”

4 Subsection (3) continues as follows:

“Subsection (2) shall not apply if during the period mentioned in that subsection –
(a) the trustee realises the interest mentioned in subsection (1),
(b) the trustee applies for an order for sale in respect of the dwelling-house,
(c) the trustee applies for an order for possession of the dwelling-house
...”

Then there are other aspects which I need not consider. Subsection 3(a) does not apply, of course, but (b) and (c) both do because the trustees have applied for (amongst other relief) orders for possession and sale in respect of the dwelling-house.

5 The only question is: did the trustees do so during the period mentioned in subsection (2), which is the period of three years beginning with the date of the bankruptcy? It is accepted that on 26th September 2014, before the period of three years had expired, an attempt, to put it at its lowest, was made by the

trustees to apply for orders for possession and sale. The issue is: was that attempt sufficient to engage s. 283A(3). In other words, did the Trustees apply in time?

- 6 The bankruptcy order was made in the Coventry County Court on 28th September 2011. It was given file number 424 of 2011. As a result of a later order made in the Coventry County Court in May 2013, various contested claims made within the bankruptcy concerning other property of or reputedly of the bankrupt were transferred to be dealt with in Birmingham, where a new file number was given: 8276 of 2013. The transfer appears initially to have been to the Birmingham County Court, which has a specialist Chancery list, but eventually the claims came to be tried in the Chancery Division of the High Court in Birmingham, also under file number 8276 of 2013.
- 7 The Court staff in Birmingham, at the time of the transfer order, requested the bankruptcy file from Coventry, who forwarded the entire file to Birmingham. However, the order effecting the transfer did not transfer the bankruptcy proceedings as such, either to the Birmingham County Court or the High Court in Birmingham, or anywhere else. It merely transferred the claims then made to be heard in Birmingham and, in my judgment, the bankruptcy proceedings, despite the physical transfer of the file to Birmingham, remained in Coventry.
- 8 It is said against that that bankruptcy proceedings can only have one seat. That is in a sense correct in that the court where the bankruptcy is proceeding has to be one court, which could be the High Court or (nowadays) the County Court or (formerly) a particular County Court. That is not necessarily determinative however of where a particular claim arising in the bankruptcy will in any given circumstances be heard.
- 9 On 26th September 2014, a paralegal from the applicants' solicitors was despatched with a cheque for £155, being the proper issue fee, to the County Court at Coventry, as it had by then become, and asked that the present application be issued. On her evidence a fee of £70, and £70 alone, was said by the staff at Coventry to be payable, and they refused to accept the fee as tendered of £155.
- 10 As is the normal practise, the proceedings were not issued there and then but the paperwork was accepted along with the fee requested and when, upon checking the system, it was discovered that the file had been sent to Birmingham, the application was sent for processing to Birmingham. The application notice was ultimately processed by the Birmingham District Registry of the High Court, upon payment as requested by that District Registry of the additional £85, being the difference between the £155 originally tendered and the £70 accepted by the court in Coventry.

- 11 I should mention that the County Court at Coventry also houses the District Registry of the High Court there, just as the county court at Birmingham is also where the Birmingham District Registry of the High Court is located, with the same administration.
- 12 The application was eventually issued on 1st November 2014 out of the High Court, Chancery Division, Birmingham District Registry. No criticism is to be made of any members of the court staff for the delay that took place between 26th September and 1st November 2014. They were faced with an unusual situation caused by the fact that the applicants' solicitors had, in my judgment correctly, regarded the bankruptcy as still proceeding in Coventry, whereas the file (and apparently the electronic references on the court's system) pointed towards the bankruptcy proceeding in Birmingham because of the previous trial heard in Birmingham.
- 13 It is accepted by Mr. Curl for the respondent that, had Coventry issued the proceedings on 26th September 2014 before sending them to Birmingham, the application would have been validly made then, albeit on his case in the wrong court. Though in the wrong court, he accepts that the trustees' application could, if necessary, have been transferred to the right court. That no longer applies as Coventry did not issue the application on that day but sent it to Birmingham for issue.
- 14 Thus, the application was made in the sense (at least) that an attempt was made to issue the application in what I have found was the right court. As things have turned out, the application appears to have been issued by the wrong court, namely, the High Court in Birmingham. That, however, does not matter because, proceedings having now been issued, Mr. Curl accepts that they are not invalidated simply by being in the wrong court. That follows, he says, from the Insolvency Rules, 1986, r.7.12. None of that avails the trustees, however, unless their application was made in time. They were not made in time, Mr. Curl says, whatever the right court, because they were not issued by any Court until 1st November 2014.
- 15 Mr. Curl, turning his attention to the language of the section, emphasises that s. 283A affects substantive proprietary rights, and submits that, as the proceedings were not started, in the sense of being issued, during the period mentioned in subsection (2), which they were not, then the consequences set out in that section automatically followed and cannot be undone by proceedings commenced later.

- 16 He also points out that proceedings are started, as a rule, when the court issues a claim form at the request of the claimant: see CPR 7.2 He acknowledges that there is an exception under CPR 7APD.5.1 relating to claims which are “brought” for the purposes of the Limitation Act 1980, but says there is all the difference in the world between a claim being “brought” and a claim being “started”, and that the exception applies only to limitation defences.
- 17 The so-called limitation exception was dealt with by the Court of Appeal in *Lewis v. Metropolitan Property Realisations Ltd.* [2009] EWCA Civ 448, and in *Barnes v. St. Helens Metropolitan Borough Council* [2007] 1 WLR 879. The headnote in *Barnes* adequately summarises the point:
- “Although by CPR r.7.2 proceedings are ‘started’ when the court issues a claim form at the request of the claimant, where the claim form was issued and was received in the court office on a date earlier than the date on which it was issued by the court, the claim is ‘brought’ for the purposes of the Limitation Act 1980 on that earlier date.”
- 18 Mr. Curl against this relied upon the case of *Salford CC v. Garner* [2004] H.L.R. 35, another decision of the Court of Appeal. That case concerned rights under the Housing Act 1996 which turned upon the date when proceedings were “begun”. Mr. Curl argued, as the Court of Appeal effectively confirmed, that the date when proceedings are “begun” is no different from the date when proceedings are commenced or started. Proceedings are commenced or started, though brought earlier, only when they are issued. Likewise, proceedings are “begun” for the purposes of the Housing Act 1996 only upon issue and not upon delivery of the relevant papers to the court. That meant that the proceedings in the *Salford* case were started by the issue of a claim form, and not earlier.
- 19 That is of course binding on me so far as concerns the Housing Act, but is not conclusive of the issue before me, because the statutory wording is different. The condition of s. 283A(3) is that “the trustee applies for” an order for possession or sale, and here the trustees have applied for both. The only issue is: when did the trustees apply?
- 20 In my judgment, the trustees applied when they delivered the application notice and tendered the relevant fee to the County Court at Coventry, which that Court centre then passed on to Birmingham upon finding that the papers were there. Birmingham ultimately issued the application on 1st November 2014. S. 283A(3) merely required the making of an application by the trustees. What happened to the application once made was out of the trustees’ hands, but was in the hands of the Court. The operation of s. 283A(3) is not however dependent upon the Court doing anything. It merely requires that “the trustee

applies”, which the trustees did in this case on 26th September 2014. It cannot be right to construe those words so as to require something to be done by the Court. The section focuses upon something to be done by “the trustee” alone. If that is right, as in my judgment it is, then the trustees in this case applied in time. They could not do anything over and above what they did, and therefore complied in my judgment with the statutory condition. It is immaterial that this results in the disapplication of substantive property rights which would otherwise arise. That is the effect of s. 283A(3) but does not govern the construction of the words “if ... the trustee applies”, which are straightforward words with no hidden meaning requiring the Court to act before the trustee can be said to have applied. In my judgment the application was made when the papers were lodged with the Court and the appropriate fee tendered.

- 21 Mr. De Waal reinforced that argument by reference to the decision of Evans-Lombe J. in *Secretary of State for Trade and Industry v. Vahora and Others* [2008] Bus. L.R. 161. In that case, which concerned section 7 of the Company Directors Disqualification Act 1986, the question was whether an application for a disqualification order had been made in time. The relevant wording was

“(2) Except with the leave of the court, an application for the making under that section of a disqualification order against any person shall not be made after the end of the period of two years beginning with the day on which the company of which that person is or has been a director became insolvent.”

- 22 This wording, referring as it does to the making of an application, is much closer to what we have in this case. Evans-Lombe, J., after a full review of the authorities, including the *Salford* decision relied upon by Mr. Curl, held that the wording was concerned not with the commencement of proceedings, but the bringing of proceedings, and proceedings are brought before issue by delivery of the relevant papers to the court office, a point which applies in my judgment not just to limitation but to the making of applications generally.

- 23 Comparison can also be made in this connection with CPR 23.5 which applies to proceedings under the Act by virtue of Insolvency Rule 7.5(1). CPR 23.5 reads as follows:

“Where an application must be made within a specified time it is so made if the application notice is received by the court within that time.”

- 24 It seems to me that CPR 23.5 is readily applicable to the provisions of s. 283A. Section 283A(2) provides what is to happen at the end of the period of three years beginning with the date of the bankruptcy, and subsection (3) says that

that shall not apply if an application is made for a relevant order, as in this case.

25 The effect of those provisions is that the trustee in bankruptcy must make an application within the time specified in s. 283A(3) if the dwelling house is not to cease to be comprised in the bankrupt's estate. It is pointless to say the application could be made outside that period, because the application would simply be hot air in that event. For the application to have any effect, it must be made within the time specified in subsection (2).

26 Moreover, as Mr. De Waal emphasised, paragraph 5.1 of Practice Direction 7A, whilst providing that proceedings are "started" when the court issues a claim form, goes on to say:

"...where the claim form as issued was received in the court office on a date earlier than the date on which it was issued by the court, the claim is 'brought' for the purposes of the Limitation Act 1980 and any other relevant statute on that earlier date."

27 Whilst that is clearly directed in the main towards the Limitation Act 1980, it is also directed to "any other relevant statute". If, as Mr. Curl says, the application in the present case must be treated in the same way as a claim form, then I do not see why the Insolvency Act 1986 is not "another relevant statute", and that the claim can be treated as "brought", albeit not "started," earlier than its issue. If the claim is treated as "brought", the trustees' must also be treated as applying for the orders sought, as a claim could not otherwise be brought.

28 Be that as it may, it seems to me that any construction of the Act which prevents the rights of the parties being subject to the vagaries of the court system must be preferable to one which allows the vagaries of the court system to intrude. In my judgment, this application was made, in the sense that it was brought, in time, and that is sufficient for the purposes of s. 283A(3).
