

Welcome to Landmark Chambers'

Property In Quarantine:

Liquidation Foundation: The Basics of Property Insolvency

Part 4: Bankrupt individuals and property

Please note a recording is not available for this webinar.

Your speakers today are...



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Issues with Insolvent Tenants



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Overview

- When can a landlord present a bankruptcy petition?
- What can a landlord do when an individual tenant is made bankrupt?



When can a LL present a bankruptcy petition?

- Section 267(2) of the IA 1986 contains **4 criteria** for bankruptcy petition.
 - a) Debts \geq £5,000
 - b) Debt = “**liquidated sum**” payable immediately or at certain future time
 - c) Debtor “unable to pay”/”no reasonable prospect” (addressed by stat demand)
 - d) No outstanding application to set aside stat demand

Meaning of “Liquidated sum”

- Not defined by the IA 1986 or predecessor legislation. Reflects long established caselaw on what constitutes a good petitioning creditor’s debt.
- Essential question: has/can the amount of the debt been ascertained or does it depend on some future event?
- See ***McGuinness v Norwich and Peterborough Building Society*** [2012] 2 All E.R. (Comm) 265 for summary of cases:
 - Judgment debt = liquidated
 - untaxed solicitors fees = unliquidated
 - Claim for value of shares = unliquidated if value is at trial date.

Application to Landlord & Tenant context

Rent ✓

Service
Charges

- Residential ✗
- Commercial?

Other
claims ✗?

What can a landlord do when an individual tenant is made bankrupt?

- Prove for debts once accrued
- CRAR
- Likely strongest remedy is to recover possession: does LL need consent of court?



Places for People Homes Ltd v Sharples [2011] EWCA Civ 813

- Statutory bar in s.285 IA 1986:
 - No creditor may (without consent of court) either (a) “*have any remedy against the property or person of the bankrupt **in respect of that debt***” or (b) “*commence any action or other legal proceedings against the bankrupt...*”
- Problem: does an action for possession (whether founded on forfeiture or service of statutory notice) fall within either provision?
- Answer: **No** – LL’s do not need consent. However, courts have power to stay (s.285(1) and (2)).

Who should be a party to the claim?



Lease vested in trustee in bankruptcy
⇒ claim against trustee + occupiers



Protected residential lease does not vest (s.283 IA 1986)
⇒ claim against T.

Issues with Insolvent Landlords



Kimberley Ziya

Issues with Insolvent Landlords



Kimberley Ziya

Can a trustee in bankruptcy seek possession?



- Functions of a trustee in bankruptcy: s.305
- Immediate vesting of the bankrupt's estate: s.306
- Power to “bring, institute or defend any action or legal proceedings relating to the property”: s.314 & para 2, Sch.5

Garwood v Bolter [2015] EWHC 3619

- Bankrupt owned 3 properties
- Value ≈ £30,000 each
- Trustee sought order for sale w/ vacant possession
- Problem: who are the occupiers?



Service of notices

- Security of tenure for resi tenants
 - Various notice requirements
 - What kind of tenancy?
 - What form of notice?
 - Who needs to be served?
-
- Difficult for trustee in Garwood



What procedure should be followed?

- IA or Part 55?
- Some form of pleading against the tenant required
- Possession order may be available under s.363
- BUT application must include allegation of cause of action
- Merits vs. procedural irregularities
- Seems to ignore:
 - Scope of Part 55
 - ss.8 & 21, Housing Act 1988
- What about PD51Z?

Insolvent co-owners



David Nicholls

Insolvent co-owners



David Nicholls

What is the effect of bankruptcy between co-owners?

- Joint ownership and vesting
- Realising the beneficial interest
- Exceptional circumstances
- Equity of exoneration

Joint ownership and vesting

- Joint tenancy at law
- Joint tenancy / tenants in common in equity
- Express declaration of trust
- Equity follows the law
- Vesting in Trustee – s.306



Realising the beneficial interest (1)

Section 14 – Trusts of Land and Appointment of Trustees Act 1996

Section 335A – Insolvency Act 1986

- Discretion:
 - Creditors
 - Family conduct / needs
 - All circumstances
- Creditors outweigh *unless* ‘exceptional circumstances’



‘Exceptional circumstances’

- Poor health
- Children
- Loss of home
- Education
- Disability
- Proceeds swallowed up



Realising the beneficial interest (2)

- Use or lose it
- 3 years
- £1000
- Sections 336, 337, 338

Equity of exoneration

- Joint ownership
- Co-owners borrow money, secured on the property
- Money is used by one co-owner to pay debts
- Presumption that the other is lending, not giving
- Rebuttable

Armstrong v Onyearu [2018] Ch 137

Thank you for listening

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