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TECHNICAL UPDATE

Bankruptcy and pensions

The case of *Horton v Henry* is being appealed and the hearing will not occur until the end of January 2016!

Common intention and detrimental loss

In the case of *Curran v Collins* [2015] All ER (D) 01 (May), the court was asked to determine whether the claimant had an interest in the three properties owned by the defendant based on a 30 year relationship and living together for 8 of those years. The court held that the claimant was unable to demonstrate detrimental reliance. The court held that to substantiate a claim for a constructive trust she would need to prove common intention and detrimental reliance.

Receivers as agents

In the case of *TBAC Investments Ltd v Valmar Works Ltd* [2015] EWHC 1213 (Ch), receivers had been appointed over the properties of TBAC when it defaulted on its loan note. TBAC entered into a contract to sell the properties with its receivers acting as agents. The purchaser failed to complete and was served with a notice to complete which he also failed to comply with. The properties were subsequently sold to a third party and the original purchaser sought specific performance of the contract. In particular they alleged that the notice to complete was invalid as one of the receivers had been replaced, as well as the notice

not being signed and it having many errors in. The court held that the party giving notice was TBAC, not TBAC acting through its receivers, the definition of receivers would include successors and even if it didn't the receivers could act jointly and severally so the original receiver's participation was sufficient.

Arbitration trumps liquidation

In the case of *Philpott and another (as joint liquidators of WGL Realisations 2010 Ltd) v Lycee Francais Charles de Gaulle School*, [2015] All ER (D) 175 (Apr) the court considered whether the arbitration clause in a contract would override the right of a liquidator to deal with the claim as part of the proof of debt process under r4.90 IR 86. The court held that the claim should be subject to arbitration.

Trustee in bankruptcy not entitled to fees for dealing with trust property

In the case of *Bell v Birchall & Ors* [2015] EWHC 1541 (Ch) a trustee in bankruptcy had been appointed over the estate of a solicitor. There had been no intervention by the SRA and the trustee sought an order from the court authorising his costs in dealing with client account money. The court refused the order advising that the work should have been completed by the solicitor at no cost. The court did not believe it had jurisdiction to deal with the issue but even if it did, it would not use its discretion.

Deregulation Act 2015

The Deregulation Act 2015 was passed on 26 March 2015 and has complex commencement provisions.

The parts of the Deregulation Act which deals with insolvency and company law are sections 17-19 and schedule 6.

The parts that came into force on 26 May 2015 are section 5 of schedule 6 and parts 7 and 8 of schedule 6.

So the partial licensing provisions, s17 and part 6 of schedule 6, actually requires further legislation to bring into force the relevant parts under the Deregulation Act. Similar to the Small Business, Enterprise and Employment Act 2015 very little of the legislation has been brought into force.

Section 5 of Schedule 6

This provision states that an IP is able to be appointed under paragraph 22 even if a petition has been presented after a notice of intention to appoint has been filed. I am not sure if this changes the position or merely reinforces the case law of *Re Ramora* UK 2011 EWHC 3959 (Ch) which states that the notice of intention to appoint provides for an interim moratorium which prevents a petition being served. The exception to this is that it does not apply where the petition is on public interest grounds, or by the Financial Conduct Authority or by the Prudential Regulation Authority.

IP personally liable for lawyer's fees

In the case of *Stevensdrake v Hunt* [2015] EWHC 1527 (Ch) the court held that the liquidator was personally liable for the solicitor's and barrister's costs. In particular the court reviewed the wording in the CFA agreement and determined that this would be binding on the liquidator despite any pre or post correspondence which stated it should be based on recoveries only.

EU Recast Regulation on Insolvency

The *Recast Regulation on Insolvency 2015/848* has now been published and has an effective date of 26 June 2015 although much will not come into force until 2017 and even 2018. The regulation may be found here <http://goo.gl/coRRfo>. Lexis Nexis have written a great article on what this means for IPs which may be found here <http://goo.gl/3cpwEV>

Pension Protection Fund Guidance Note on IPs' fees

The PPF Restructuring & Insolvency Team have issued a guidance note on IPs' fees which may be found here <http://goo.gl/uOc4Og>. It reminds IPs that where there is an insolvent event and a defined benefits pension scheme they will likely be the major creditor. The guidance makes it clear that they wish to be consulted early in the process and require estimates of fees to be incurred if they are to be agreed. The note seems to be anticipating the amendment to fee approval being introduced in October 2015. Interestingly, where there is to be a pre-pack they require that consultation occurs with them even if the insolvency event has not yet happened.

Football League and insolvency

The Football League have taken the opportunity to review their insolvency policy. The bad news is that if a club enters administration it will now have an automatic 12 point deduction instead of 10 points but the good news is that the club no longer has to enter a CVA for the football share to be transferred. Further information may be found here <http://goo.gl/uAB5q5>.

Health & Safety Nuggets

Here is the second in our series of HEALTH & SAFETY NUGGETS from Simon Joyston-Bechal, solicitor at Turnstone Law:

Are you one of the many IPs who think that the criminal enforcement authorities will treat IPs leniently, once they understand that you can't have been expected to sort out the legacy of safety problems on a limited budget and with a buyer hopefully in the wings to take over in a few weeks? That would be a mistaken comfort. You can be personally prosecuted if you are responsible for unsafe premises or for work practices that are unsafe. Remember, if it can't be done safely, don't do it. Don't risk your reputation and career in the hope that you will be lucky.

Click [here](#) for further information about training on H & S for IPs.

Personal insolvency JIEB Saturday course

My personal insolvency JIEB classes have a maximum of 10 students allowing all students an opportunity to participate in the learning process. My Saturday personal insolvency JIEB course starts 20th June. Click the link below for details www.insolvencyexamtraining.co.uk/jieb2015.html

Deregulation Act 2015 - ctd

Part 7 Schedule 6

This relates to the liabilities of administrators and administrative receivers of companies and preferential debts of companies and individuals. The definition of wages and salary no longer includes "references here and in those paragraphs to remuneration in respect of a period of holiday include any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social security as earnings in respect of that period."

Part 8 Schedule 8

This relates to proxies at a poll taken 48 hours or less after it was demanded under the Companies Act 2006.

My biggest complaint about both the SBEE 2015 and the Deregulation Act is that the parts that would be the most useful to IPs have not been brought into force and sadly we may be waiting until the New Rules 2016 are introduced.

However as mentioned last month the Insolvency Service are in discussions with the JIEB to determine what qualification will be appropriate for partial licensing and therefore this may be introduced sooner. Whilst it is evident that there is the political will to bring about partial licensing, I am sure we all remember a similar thing occurring in 2007 which was then never brought in to force (one can but hope).

SIP 16 Update

The pre pack pool has now held a conference day to discuss how this will work in practice. The result of those discussions have yet to be disseminated but it is understood that there will no fundamental changes to how the pre pack pool was envisaged to work under the new draft SIP 16.



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