



Do receivers owe duties to bankrupt mortgagors?

January 2016

The Court of Appeal has recently considered whether an LPA Receiver owes a duty of care to a bankrupt mortgagor in connection with the way the Receiver deals with the mortgaged property. In a decision which will be welcomed by Receivers and their insurers, the court decided that a Receiver owes no such duties.

The facts

The claimant, Mr Purewal, owned a buy to let property in Birmingham. The property was mortgaged to the Bank of Scotland, but in early 2009 the claimant defaulted on the mortgage and the Bank appointed the defendants as LPA Receivers over the property.

Shortly after their appointment, the defendants informed the claimant that they had their own insurance policy which covered the property and that he should therefore cancel his policy, which he did.

On 9 September 2009, a bankruptcy order was made against the claimant. Just over a week later, the claimant visited the property and discovered that a water leak had caused a significant amount of damage to it. The claimant informed the defendants of the leak and damage the same day.

Despite having been told by the claimant of the damage, the defendants did not take steps to repair the property, nor did they make a claim in connection with the damage under their insurance policy.

The claimant was discharged from bankruptcy in April 2011. He carried out repairs to the property in May 2011. In August 2011, the claimant's trustee-in-bankruptcy transferred the property back to the claimant.

The claimant subsequently brought a claim against the defendants seeking damages for breach of the duties he said they owed him in relation to the property. The claimant alleged that the defendants owed him a duty to make a claim for the water damage under their insurance policy and a duty to use the insurance monies to carry out repairs to the property.

The first instance decision

The trial Judge rejected the claimant's claim. In support of his claim, the claimant had relied on the decision in *Medforth v Blake*, which he said established that a Receiver owes an equitable duty to a mortgagor when dealing with the mortgaged property, which duty arises from the equity of redemption which vests in the mortgagor upon the Receiver's appointment.

Any comments or queries?

Alexandra Anderson
Partner

+44 20 3060 6499
alexandra.anderson@rpc.co.uk

Jonathan Angell
Consultant

+44 20 3060 6073
jonathan.angell@rpc.co.uk

The Judge accepted that, if the defendants had owed a duty to the claimant under the *Medforth* principles, then the defendants would have breached that duty by failing to make a claim for the water damage under their insurance. However, he concluded that in this case the defendants did not owe the claimant the duty for which he contended. This was because the duties that a Receiver owes to a mortgagor cease when the mortgagor is made bankrupt, at which point the equity of redemption vests in the mortgagor's trustee-in-bankruptcy. Here, the claimant was made bankrupt before any breach by the defendants of their duties; the person who had the right to complain (if anyone) was the claimant's trustee-in-bankruptcy. The Judge also rejected the claim on the basis that the repairs that the claimant had carried out (and in respect of which he was seeking damages) were undertaken before the property had been transferred back to him and so were carried out by him as a volunteer. Finally, the Judge found, that even if the defendants had made a successful claim under their insurance, they would not have been obliged to use the monies received to repair the water damage.

The claimant appealed the Judge's findings.

The decision of the Court of Appeal

Lord Justice Patten gave the judgment of the court. He rejected the claimant's appeal, essentially agreeing with the trial Judge. In doing so, he analysed the law regarding the duties owed by Receivers in some detail and made observations of general importance to Receivers and their insurers.

Patten LJ noted that the Insolvency Act 1986 made it clear that title to the property vested in the claimant's trustee-in-bankruptcy upon the claimant being made bankrupt. As any breach by the defendants of their duties

occurred shortly after 18 September 2009 (when the claimant informed the defendants of the water damage), the claimant had to establish that the vesting of the property in the trustee on 9 September 2009 did not operate so as to remove from him any interest in the property such as would give rise to a duty under the principles in *Medforth*.

The claimant's case was not based on an assignment to him of any cause of action by the trustee but rather on an alleged duty owed to him by the defendants even after he became bankrupt. He said such a duty arose because, even after he was made bankrupt, he remained liable under the mortgage until he was discharged (albeit the mortgagee could not enforce the mortgage) and therefore he had an interest in the property at the time the defendants failed to make a claim under their insurance.

Patten LJ disagreed. He noted that *Medforth* was not a case involving a bankrupt mortgagor. This was an important distinguishing factor; in *Medforth* the mortgagor retained title to the property (subject to the mortgage) and so retained the equity of redemption, whereas here the claimant did not. The duty identified by the court in *Medforth* stemmed from the fact that the non-bankrupt mortgagor retained the right either to receive the property back upon payment of the monies due under the mortgage or to receive any surplus proceeds of sale if the property was sold. Where the mortgagor was made bankrupt, however, he did not retain the equity of redemption which became vested in his trustee, along with all his other property.

In the light of the above, Patten LJ concluded that the trial judge was right to dismiss the claimant's claim on the basis that the defendants did not owe him any duties, their duties being to the trustee.

Although it was not necessary, in the light of his primary findings, for him to reach a decision on causation, Patten LJ went on to observe that, even if the defendants had made a successful claim under their insurance, they would not have been obliged to use the monies they received to carry out repairs to the property. The likelihood was that the Bank, as it was entitled to under the Insolvency Act, would instead have required the defendants to use those monies to reduce the amount owed under the mortgage. As such, the claimant was not able to establish his case on causation either.

Conclusion

The scope of the duties owed by a Receiver pursuant to the decision in *Medforth* and the persons to whom he owes those duties is fact sensitive. Where the mortgagor is not bankrupt, a Receiver is likely to owe the mortgagor ongoing duties when exercising

his rights under his appointment by virtue of the mortgagor's ongoing interest in the property, arising from him retaining the equity of redemption. However, where the mortgagor has been declared bankrupt, the Receiver will not owe him any ongoing duties, the Receiver's duties being owed only to the mortgagor's trustee-in-bankruptcy in whom the equity of redemption vests upon the mortgagor being declared bankrupt.

While this does not mean that a Receiver cannot be held liable for shortcomings in his dealings with the property under his appointment, it does at least limit the circumstances in which he is likely to find himself on the wrong end of a claim alleging that he has mishandled matters when exercising the rights granted to him as Receiver.

About RPC

RPC is a modern, progressive and commercially focused City law firm. We have 78 partners and over 600 employees based in London, Hong Kong, Singapore and Bristol.

"... the client-centred modern City legal services business."

At RPC we put our clients and our people at the heart of what we do:

- Best Legal Adviser status every year since 2009
- Best Legal Employer status every year since 2009
- Shortlisted for Law Firm of the Year for two consecutive years
- Top 30 Most Innovative Law Firms in Europe

We have also been shortlisted and won a number of industry awards, including:

- Winner – Law Firm of the Year – The British Legal Awards 2015
- Winner – Competition and Regulatory Team of the Year – The British Legal Awards 2015
- Winner – Law Firm of the Year – The Lawyer Awards 2014
- Winner – Law Firm of the Year – Halsbury Legal Awards 2014
- Winner – Commercial Team of the Year – The British Legal Awards 2014
- Winner – Competition Team of the Year – Legal Business Awards 2014
- Winner – Best Corporate Social Responsibility Initiative – British Insurance Awards 2014

Areas of expertise

- | | | |
|-------------------------|-------------------------|------------------|
| • Banking | • Employment | • Private Equity |
| • Commercial | • Insurance | • Real Estate |
| • Commercial Litigation | • Intellectual Property | • Regulatory |
| • Competition | • Media | • Reinsurance |
| • Construction | • Outsourcing | • Tax |
| • Corporate | • Pensions | • Technology |

