

CASE LAW

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TECHNICAL UPDATE

To pay rent or not to pay rent that is the question ...

In the case of *Jervis v Pillar Denton and others*; re Games [2014] EWCA Civ 180 common sense has finally prevailed and *Goldacre* and *Luminar* have been overturned. Rent is now payable for the period of occupation only. It has been suggested that on closed cases the landlord may be able to make a claim against the IP. I would suggest IPs assess how much rent would have been payable on cases where they relied on *Luminar* case law and advise your PII insurers of this small risk.

Jurisdiction against non EU individual

In the case of *Schmid v Hertel* C-328/12 the court held that Article 3(1) of the Regulation should be interpreted as meaning that the courts of the member state, within the territory of which insolvency proceedings had been opened, had jurisdiction to hear and determine an action to set a transaction aside by virtue of insolvency, that was brought against a person whose place of residence was not within the territory of a member state.

Winding-up a company when it is just and equitable

In the case of *Re Brand & Harding Ltd* [2014] EWHC 247 (Ch) the court reviewed the circumstances in which it would be appropriate to wind-up the company on the

grounds that it was just and equitable. The court stated that the following questions should be asked: is there (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence; (ii) an agreement or understanding that all or some of the shareholders had to participate in the conduct of the business; (iii) a restriction upon the transfer of the members' interest in the company? In the circumstances of the case, a farm being run by sisters as a quasi partnership, the breakdown of the relationship meant it was appropriate to wind-up the company.

IP fees under scrutiny

The insolvency service have published a consultation paper which may be found here <http://goo.gl/IbQsLd> detailing proposed changes to the way IPs charge fees. Some of the key proposals being made are:

- IPs not able to claim time costs unless there is a secured creditor or a committee
- IPs restricted to taking scale rate on realisations and distributions
- Secretary of State (SOS) to be able to impose sanctions on RPBs
- SOS to be able to apply to court to directly sanction an IP
- SOS given powers to require disclosure of information from an RPB or IP
- RPBs to be able to assess the validity of any complaint about the quantum of fees
- SOS to be only RPB should they decide it is necessary.

The proposals I would suggest are very concerning for the profession and I would encourage all IPs to

Insolvency Guidance Paper - Succession Planning

Having finished reviewing the current and draft SIPs I thought it might be beneficial to review the Insolvency Guidance Papers.

Succession planning needs to be dealt with by all IPs whether you are part of a large firm or are a sole practitioner. The continuity arrangement is required to ensure an IP's caseload is able to be dealt with in the event he/she is unable to continue to practise.

There are both practical and financial considerations which need to be addressed. Whilst the practical issues may be dealt with easily the financial implications are not so easily dealt with.

Despite the Minister's recent announcement that it is not fair to creditors to charge hourly rates I am sure we all have cases where only a statement of affairs fee has been paid and there are no assets in the case or a rota appointment has been accepted only to identify that there is no value in the assets. It is the same in all insolvency practices, we have cases with assets and cases without and all cases need to meet the statutory requirements.

A formula for valuing the WIP, but also considering the work to be completed where there are no assets, will need to be agreed and form part of any continuity agreement.

comment.

EU draft insolvency legislation

The draft EU insolvency legislation is progressing through the system despite the Law Society's concerns about the absence of the proposal relating to rescue proceedings. The key issues to be aware of are:

- the look back period of 3 months when establishing COMI
- the creation of an EU-wide system of web-based insolvency registers
- the possibility of avoiding the opening of multiple proceedings, and
- the rules dealing with the insolvency of groups of companies.

Further information may be found here <http://goo.gl/poiDC7>.

CVA & ADM process available to Societies and Credit Unions

The Industrial and Provident Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 SI 2014/229 comes into effect on 6 April 2014 and may be found here <http://www.legislation.gov.uk/ukxi/2014/229/made>.

Changes to Northern Ireland legislation

Two Statutory Instruments will be implemented on 13 March 2014. The Building Society Insolvency Rules (Northern Ireland) 2014 SR2014/41 which may be found at <http://goo.gl/PJjTtd> deals with payments to deposit holders. The other is Building Society Special Administration Rules (Northern Ireland) 2014 SR 2014/40 which may be found at <http://goo.gl/EM9iTL>.

Personal Insolvency Vision

It was refreshing to review the R3 paper "The Personal Insolvency Landscape" which may be found here <http://goo.gl/2kvXgU>. The suggestions of standardisation, increasing the financial thresholds in a DRO and the punitive thresholds in a bankruptcy, as well as seeking to lessen the credit impact of IVAs, gives hope that there may one day be a personal insolvency regime that reflects societal needs.

Guidance: Limited Liability Partnerships

Companies House has updated its guidance on limited liability partnerships' liquidation and insolvency GPLLP5 which may be found here <http://goo.gl/oN45y5>. The guidance reflects the most recent changes to the insolvency legislation as it applies to LLPs.

Appointment taking IP (Norwich)

A vacancy has arisen for an appointment taking IP in a young dynamic firm in Norwich. Further details may be found here <http://insolvencyexamtraining.co.uk/jobs.html> or contact Jo Moore on 01603 284284.

JIEB Exam Results

Results are out 7 March and congratulations to all who pass the exams and for those who are able to obtain their licence. However, if you are still on your journey, then may I suggest you review my website <http://www.insolvencyexamtraining.co.uk>. I have a full liquidation course starting in March, as well as weekend courses and re-sits courses starting July. Make the decision to pass today.

Insolvency Guidance Paper - Succession Planning ctd

The practical issues are easier to address and I have dealt with some of them below:

Power of attorney

Since there will be a period between the IP ceasing to act and when an application for a block transfer may be made and issued it is imperative that the successor is able to immediately take control and meet any statutory and financial obligations. It is important therefore to have a power of attorney completed at the time the continuity agreement is finalised.

Control

To allow the successor IP to take control he must:

- take ownership of, or gain access to, case working papers;
- obtain access to practice records; and
- take control of financial arrangements.

Litigation

What happens where a case is contentious or litigious, how will the successor IP be able to deal with this issue? It is recommended that the IP and his successor discuss regularly any contentious cases. I would recommend as a minimum sending an updated case list once every 6 months with comments on any complex cases.

Contract

I would seek professional help in drafting the continuity agreement and remember to make sure the agreement provides for an application to be made to court for a block transfer. The ACCA has a great fact sheet with some draft continuity agreements which may be found here <http://goo.gl/hIBXoH>.

The guidance paper is not binding, but you will be required to ensure you have addressed this issue.



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Joanne also provides training for the JIEB, CPI, CPPI & CPCI exams.

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