

CASE LAW

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TECHNICAL UPDATE

Court restored security

In the case of [NRAM Plc v Evans and another \[2015\] EWHC 1543 \(Ch\)](#) the bank had released security based on the first loan being repaid without realising the second secured loan was still outstanding. The court held that the defendants had contributed to the mistake as their solicitor's letter was insisting of the release of the security and referred only to the first loan.

Compelling debtor to co-operate not abuse

In the case of [Wilson v Williams \(Trustee in Bankruptcy for John Wilson\) \[2015\] All ER \(D\) 275 \(Jun\)](#) the trustee obtained a court order for the debtor to disclose details of his pension, which had a fund of £1,000,000 and had his automatic discharge suspended due to non-cooperation. The debtor appealed, stating that the pension was excluded by law and that the suspension of the automatic discharge was disproportionately severe. The court held that since there was no evidence of oppression from the trustee, the order would stand.

Copyright is an asset which vests in the Trustee

In the case of [Cole v Howlett \[2015\] EWHC 1697 \(Ch\)](#), [\[2015\] All ER \(D\) 178 \(Jun\)](#) a discharged debtor issued proceedings for fringe of copyright. The court held that since the debtor had been made bankrupt, the copyright vested in the OR as trustee in

bankruptcy. The debtor did not have the right to pursue the claim, only the OR had that right. However, the court did accept the assignment of the right from the OR to the debtor and proceedings were allowed to continue on that basis.

Statutory demand for a disputed debt

In the case of [Astra Resources plc v Credit Veritas USA LLC \[2015\] All ER \(D\) 252 \(Jun\)](#) the claimants were seeking an injunction to stop a creditor from petitioning to wind them up following a statutory demand. It was claimed that the debt was disputed and it was an abuse of process as their ultimate aim was to cease control of the company. The court held that since \$600,000 was undisputed, the petition could be presented based on this debt by them as a creditor and hence it was not abuse of process.

Liquidators' failure to comply with court order

In the case of [Re Atrium Training Services Ltd; Re Kimberly Scott Services Ltd; Smailes and another v McNally and another Citation: \[2015\] All ER \(D\) 232 \(Jun\)](#) the liquidators had issued proceedings under s213 and were claiming £50,000,000. An order was made for the liquidator to review and list documents for the period they claimed the incorrect amount of tax had been paid. Failure to comply with the order would result in the action being struck out. The liquidators failed to comply with

Recast Regulation on Insolvency

The staggered introduction of the Recast Regulation on Insolvency has left IPs wondering what they need to know now. So below is a brief timeline:

To be introduced 26 June 2016

The description of national insolvency law and procedures to be provided by each Member State (Recast Regulation, arts 86, 91(2)(a)). Clearly this will not have any immediate impact on IPs and case administration.

To be introduced 26 June 2017

Since this is when the bulk of the regulation is introduced I have just chosen a few key areas: **COMI**

A key matter which will have an impact for IPs is the introduction of a definition of COMI. The presumption that the registered office address is the company's COMI will remain provided the company has not changed registered office in the three months prior to insolvency. Also special consideration will be given to creditors and their perception as to where a debtor conducts his business.

Challenge to COMI

There is an express right for debtors or creditors to challenge the COMI that has been determined. We have had a few cases over the last few years which have dealt with forum shopping and it will be interesting to see if having a definition of COMI reduces challenges.

the order and the action was struck out. The liquidators applied for relief from this order but the court held that no relief was available since the liquidators had continuously failed in their disclosure requirements during the proceedings.

Client money distribution

In the case of *Re Worldspreads Ltd (In Special Administration)* [2015] All ER (D) 225 (Jun) the administrators applied to court for an order defining the process by which they would be able to pay out pooled client money allowing, for among other things, the non-submission of claims and rejection of claims.

Adjudicating claims

In the case of *Re Kingstons Investments Ltd (in Creditors' Voluntary Liquidation); Adlon Ltd v Sale (as Liquidator of Kingstons Investments Ltd)* and another [2015] All ER (D) 122 (Jun) the directors called a s98 meeting knowing there was a petition pending by the main independent creditor. At the s98 meeting the main creditor's vote was not admitted in full. After the s98 meeting and prior to the petition being heard, a creditors' meeting was held as the main independent creditor sought to have their own IP jointly appointed. However, again the main creditor's claim was partially rejected and their proposed IP not jointly appointed. The court felt that there was a self-interest threat posed by a liquidator adjudicating claims which would effect their appointment. Consideration was also given to the fact that the other votes admitted were mainly from connected parties and allowed the appointment of the joint liquidator.

Northern Ireland

The *Insolvency (Amendment)*

Rules (Northern Ireland) 2015 S.I. 2015/262 comes into force 3 September 2015 and may be found here <http://goo.gl/DfwtT3>.

Free Access to Companies House

Access to Companies House for free has become a reality and may be located here <https://beta.companieshouse.gov.uk>.

Health & Safety Nuggets

Here is the third in our series of H & S Nuggets from Simon Joyston-Bechal, solicitor at Turnstone Law: Do you think there needs to be an accident or injury before an IP or the IP's staff or firm can be criminally prosecuted for breaching health & safety duties? That is a common misconception. Most of the criminal offences arise from merely exposing workers and the public to risk, where protection from risk is reasonably practicable. For example, duty holders are often prosecuted for exposing people to asbestos or for inadequate fire precautions, even when nobody is injured and there has not been a fire. Click [here](#) for further information about training on H & S for IPs.

The Compliance Alliance

I am excited to announce the launch of the partnership The Compliance Alliance with myself, Deborah Manzoori and Michelle Butler. We are bringing a unique and high quality range of products and services which we hope will benefit IPs. Please find out more on our website : thecompliancealliance.co.uk or contact us: info@thecompliancealliance.co.uk



Recast Regulation on Insolvency - ctd

Establishment

Together with a new definition for COMI we will have a new definition of establishment. Since this will only apply in secondary or territorial proceedings, it will be of interest to IPs dealing with cross border insolvency.

Creditors' claims

The procedure for creditors to lodge claims and have them adjudicated is dependent upon where the proceedings have been issued. However, the part of the regulation which will impact case work will be the need to give at least 30 days' notice to creditors outside of the UK as well as advertising in the European e-Justice Portal in all the official languages of the creditors being asked to submit claims in the EU. Creditors must also either use a standard claim form or ensure the information on the standard claim form is provided. It will be interesting to see if the new rules incorporate these requirements or whether it will be another thing to add to checklists and diaries so it is not missed.

To be introduced 26 June 2018

The establishment of National Insolvency Registers, (Recast Regulation, arts 24(1), 91(2)(b)). It will be interesting to see how this is implemented but as a minimum I would anticipate another diary line attached to a form with a fee to be sent upon appointment.

To be introduced 26 June 2019

The interconnection of National Registers (Recast Regulation, arts 25, 91(2)(c)).

Whilst I am sure that the recast regulation will impact IPs, I am also aware that the focus of the profession will be on the changes in remuneration, the new SIPs 16, 9 and a combined 2 & 4, and of course the new rules in 2016.



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

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