



Eatons

Debt Still Valid After Bankruptcy

When a person is unable to pursue a claim against someone who has been made bankrupt on account of the bankruptcy having been discharged, it may still be possible to pursue the claim against the bankrupt's insurers, following a recent ruling.

The case involved 12 claims for breach of trust against nine solicitors and a Mr Dixit Shah. It was brought by the Law Society and 19 of the various clients of the solicitors.

Mr Shah had acquired several solicitors' firms. Allegations had been made that a total of £12.5 million had been misappropriated by Mr Shah from the client accounts of these firms. Three of the solicitors were subsequently made bankrupt and then discharged.

The Law Society's compensation fund made various payments to the aggrieved clients, totalling £12.5 million. Since the bankrupts no longer had professional indemnity insurance, cover was effectively provided by the Law Society.

However, because the three bankrupts had been discharged, the Law Society was unable to pursue a claim against them. For this reason, the Law Society attempted to make a claim against their insurers under the Third Parties (Rights Against Insurers) Act 1930, in order to recover monies paid out from the compensation fund in respect of the bankrupt solicitors' clients.

To do this, it was necessary to prove that the claim against the insured was no longer disputable. Although the effect of the discharge of bankruptcy was to refute the Law Society's incomplete claims, it was possible to elevate those claims to the status of 'established' simply by the admission of the claim in bankruptcy.

It follows that although a right to pursue an action against a debtor was lost once the debtor had been discharged from bankruptcy, this did not mean that the underlying cause of action was destroyed.

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The ruling allowed the Law Society the means of demonstrating that the discharged bankrupts were liable to the various clients, by simple proof of debt. Once this had been done, the Law Society would then be able to pursue the insurer directly.

This decision has far-reaching implications in such cases. The circumstances of this case are very unusual, but for clients of solicitors it provides the reassurance that in the very unusual event of the bankruptcy of a solicitor who is the subject of a claim, the claim can still be pursued. Not all people offering professional advice are insured. Solicitors must have appropriate insurance arrangements in place in order to protect their clients.

For advice on any insolvency issue, please contact Marcus Baff on Tel: 01274 728327.

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