

Perversity—general control of a trustee in bankruptcy by the court (Patley Wood Farm LLP v Kicks)

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Restructuring & Insolvency analysis: The applicants, who were creditors of Mr and Mrs Brake (the Brakes), applied for an order under section 303(1) of the Insolvency Act 1986 (IA 1986) directing the trustees (the Trustees) of the Brakes' bankrupt estate (the Estate) to apply to be joined into and take steps in relation to proceedings concerning a property called West Axnoller Cottage (the Cottage) which was an asset of the Estate. The applicants objected to the Brakes potentially being able to regain possession of the Cottage and wanted the Trustees—who had been reluctant to get involved, to take steps to intervene in proceedings pending in the Court of Appeal between the Brakes and The Chedington Court Estate Ltd (Chedington) in which the Brakes applied for possession of the Cottage (the Eviction Proceedings). The court granted the application and disapproved of the Trustees lack of action and unwillingness to involve themselves in the Eviction Proceedings, the subject of which was clearly relevant to the Estate and found their decision making in this regard to be perverse. Written by Ben Rutledge, associate at Keidan Harrison LLP.

Patley Wood Farm LLP and others v Kicks and another [\[2022\] EWHC 2973 \(Ch\)](#), [\[2022\] All ER \(D\) 84 \(Nov\)](#)

What are the practical implications of this case?

Trustees in bankruptcy should carefully consider the implications of taking a particular course of action - including deciding to do nothing.

As can be seen from this case, pursuing a course of inaction is unlikely to be a successful strategy. Trustees should regularly review decisions and consider whether any circumstances have changed to make a particular decision perverse. Otherwise, they leave themselves open to a [IA 1986, s 303](#) application whereby the court can direct trustees in bankruptcy to take certain actions.

What was the background?

The application was made in the context of wider litigation between the Brakes and Dr Geoffrey Guy and various entities controlled by him (the Guy Parties), including Chedington. For this analysis, it is not necessary to set out in detail the lengthy history to this matter.

However, in summary, the Brakes ran a wedding and events business from West Axnoller Farm (the Property). They did so by way of a partnership with Patley Wood Farm LLP (the Partnership). The Partnership acquired the Cottage in 2010.

Following a dispute with the Partnership which ended with an award including costs being made against the Brakes, they were adjudicated bankrupt in 2015. The Partnership went into administration in 2016 and then liquidation in 2017.

The interest in the Cottage was split but the Trustees did nothing about it. However, in 2014, the Property—including the Cottage (albeit wrongly), had been sold to another company. That company was subsequently sold to Chedington. Upon Chedington making the purchase they terminated the licence under which the Brakes had been staying at Axnoller House, also on the Property. The Brakes refused to leave Axnoller House but Chedington took possession of the Cottage. The Brakes therefore brought the Eviction Proceedings.

In the Eviction Proceedings, the Brakes failed at first instance before His Honour Judge Paul Matthews and sought permission to appeal. The Brakes were given permission to appeal on a limited number of grounds.

The applicants then asked the Trustees to oppose the Eviction Proceedings on the basis that they held the entire beneficial interest in the Cottage and that the Cottage was the main asset in the Estate. It was argued that the Trustees remained under a duty to manage the Cottage as an asset of the Estate in the interest of creditors and that the Trustees could not allow the Brakes to take possession of the Cottage. The Trustees opposed the application.

What did the court decide?

Standing

The court first decided that the applicants had standing to bring the application because (i) they represented approximately 60% of the debts in the Estate and had a legitimate interest in the relief sought since more money would come into the Estate if the Cottage was monetised, and (ii) the Trustees remuneration on its own could not prevent the creditors from having an interest in the application. However, the Brakes did not have standing because their interest was one of frustration which was not a legitimate interest.

Perversity

The court surmised that upon a IA 1986, s 303(1) application the court will intervene only where there is fraud or bad faith on the part of the trustee, or the conduct or decision making of the trustee is not merely wrong, but can properly be characterised as perverse, that is, so utterly unreasonable and absurd that no reasonable trustee would have done it.

This was not a case of fraud or bad faith. Rather, the court needed to decide whether the Trustees' position in not joining the Eviction Proceedings could properly be described as perverse, in the sense of one which no reasonable trustee would adopt.

The court was clear that it was not perverse for a trustee in bankruptcy to simply get things wrong and like anyone they may make mistakes from time to time. However, it was perverse for a trustee to maintain a decision even when the relevant mistakes have been corrected.

In this case, the court found that the Trustees were striving at all costs not to have to take part in litigation against the Brakes which was an entirely illegitimate consideration. The Trustees are professional office-holders remunerated to take on difficult jobs like this case.

The applicants had given the Trustees a number of reassurances such that the court said that it was 'difficult to see the downside to the Trustees in making an application to intervene'. To the contrary, if the Trustees were successful there would be several benefits including obtaining an income stream from the Cottage.

The Trustees have a duty to advance the interests of creditors and it was 'unimpressive' that they had taken the stance of hoping that something will turn up to get them out of what they perceived to be an awkward situation.

Decision

The court found that the Trustees' decision not to intervene in the Eviction Proceedings was an 'absurd decision, to which no reasonable trustee could have come'. On that basis, the decision was perverse, and the test for [IA 1986, s 303\(1\)](#) was satisfied. The court ordered the Trustees to apply to be joined to the Evictions Proceedings and take certain other steps in relation to the Eviction Proceedings.

Case details:

- Court: High Court of Justice, Chancery Division, Bristol District Registry
- Judge: His Honour Judge Paul Matthews (sitting as a High Court judge)
- Date of judgment: 25 November 2022

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