

Insolvency

The Court Service's duty to notify the Land Registry of bankruptcy petitions

When Her Majesty's Court Service (HMCS) issues a bankruptcy petition against a debtor, it must notify the Land Registry (LR) and ask LR to register notice of the petition against any property registered in the debtor's name (*rule 6.13, Insolvency Rules 1986 (1986 Rules)*). The idea behind this provision is to stop debtors from transferring property into the name of a third party in the run up to their bankruptcy, and thereby deprive creditors of the benefit of the value of the property. Once LR registers a notice of the bankruptcy petition, any transferee of the property cannot defend any litigation by a **trustee in bankruptcy** (trustee) to recover the property on the grounds that the transferee bought in good faith and without notice of the bankruptcy petition.

In *The trustee in bankruptcy of Louise St John Poulton v Ministry of Justice [2009] EWHC 2123 (Ch)*, HMCS did not notify LR of the petition issued against P. P, after the issue of the petition, sold a property of which she was the registered owner. She did not use the proceeds to pay her creditors, nor did she pay the proceeds to her trustee upon his appointment.

The trustee could not challenge the sale, as the third party that bought the property did so in good faith and without notice of the bankruptcy petition. The trustee then issued proceedings against HMCS in respect of its failure to notify LR of the bankruptcy petition, seeking damages equivalent to the sale proceeds of the property, which, the trustee claimed, were lost to creditors as a result of that failure. HMCS applied to strike out the trustee's claim, on the grounds that it owed no duty to the trustee to notify LR of the petition.

The High Court held that rule 6.13 of the 1986 Rules created a statutory duty on HMCS to notify LR when HMCS issued a bankruptcy petition. The High Court held that parliament intended that a trustee could enforce the rule against HMCS should HMCS fail to comply with it. Therefore, the High Court allowed the trustee to proceed with his action. The case is unusual, in that HMCS typically notifies LR as a matter of course when it issues a bankruptcy petition. However, the potential to recover loss suffered as a result of an administrative error by HMCS is clearly of interest to insolvency practitioners.

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