

## Trustees in Bankruptcy Not Liable for Existing Costs Orders

*Gabriel v BPE Solicitors [2015] UKSC 39*

Many IP officeholders are so used, in the corporate landscape, to acting as the agent of the company over which they are appointed that they often forget that, in personal insolvency, trustees in bankruptcy will be personally liable for actions that they take – including litigation upon which they embark for the benefit of the bankrupt's estate. The above case, concerned the extent to which that personal liability would extend to historic liability that the bankrupt had incurred prior to his bankruptcy.

Mr Gabriel had sued his solicitors for negligence in respect of their advice relating to a commercial loan entered into by him. Gabriel had been successful at first instance and awarded damages equating to the amount that he should have recovered under the loan agreement. The solicitors successfully appealed and Gabriel's damages were reduced to a nominal £2 and he was ordered to pay the solicitors' costs. Gabriel appealed against that costs order.

In the meantime, before that appeal came to court, a bankruptcy order was made in respect of Gabriel. His subsequently-appointed trustee in bankruptcy elected to continue the appeal against the costs order. The outcome was material as the dividend to unsecured creditors would be reduced from around 26p/£ to only 5p/£ if the solicitors' costs were included; it was clearly worth appealing.

The question of who should bear the burden of the historic costs orders arose – the trustee in bankruptcy quite reasonably argued that he should not become personally liable on an historic costs order (which would otherwise fall to be dealt with as an unsecured claim) simply because he elected to continue the bankrupt's appeal against the order. The matter was escalated to the Supreme Court which agreed to deal with the issue before the substantive appeal so that there would be clarity.

The Supreme Court unanimously agreed with the judgment of Lord Sumption and found that the trustee in bankruptcy would not be liable for costs orders made prior to his appointment and could not be said to have adopted any such liability by his decision to continue the appeal.

This is, respectfully, clearly the correct decision; any alternative could have the unintended consequence of promoting the effect of the costs order above the competing claims of other, unsecured creditors.

**If you have any queries in relation to this, or any other, matter, please do not hesitate to contact us – [office@amblaw.co.uk](mailto:office@amblaw.co.uk) or 020 3651 5646.**



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