

Receivers' Duty to Mortgagor

**Purewal v Countrywide Residential Lettings Ltd & Ors
[2015] EWCA Civ 1122**

Receivers were appointed over the Claimant's buy-to-let property following his failure to keep up the mortgage payments. The Claimant was subsequently made bankrupt and, accordingly, the property vested in his trustee in bankruptcy. On instruction from the receivers, who had taken out buildings insurance, the Claimant cancelled his own policy. When he visited the property in September 2009, the Claimant found a water leak and immediately notified the receivers. It transpired, on enquiry from the Claimant, that six months later the receivers had done nothing to follow this up and had not even made an insurance claim.

The Claimant was subsequently discharged from his bankruptcy and the trustee transferred the property back to him for a nominal £1.00 consideration. The Claimant had, by that stage, already arranged for repairs to be carried out to the property at his own expense.

Unsurprisingly, the Claimant then sued the receivers in negligence for their failure to notify their insurers of the damage to the property. Had they done so, they would have been required or, at least, authorised to expend the monies on repairs to the property.

The judge at first instance dismissed the claim. First, if the receivers owed a duty of care, it would have been owed to the trustee in whom the property vested not to the bankrupt Claimant. Secondly, the Claimant had carried out the repairs as a volunteer and it would not have been fair to saddle the receivers with the cost of repairs carried out by the Claimant on a property that he did not own and which he had not been asked to carry out.

The Claimant appealed on the bases (1) that he remained the mortgagor throughout and thus maintained a residual interest in the property and (2) there was an unbroken line of causation from the receivers' negligence to the Claimant's loss and the issue of his being a volunteer was wrong and irrelevant.

The Court of Appeal dismissed the Claimant's appeal. A duty of care could only be owed to a mortgagor to the extent that he maintained an interest in the equity of redemption. In this case the equity had vested in the trustee and so no duty was owed to the Claimant. Their Lordships also dismissed the Claimant's causation argument as they held that there was no knowing that, even if the receivers had claimed on the insurance, they would have used the proceeds actually to repair the property.

This case will undoubtedly seem very harsh to the lay reader. It is clear that the receivers had simply failed to follow up on the damage caused by the water leak which the Claimant had had to pay to have repaired. The courts have always, however, resiled from imposing any duty on receivers to anyone other than their appointor. It is perhaps also surprising that the fact that the receivers might have been at liberty to claim on the insurance but then still fail to carry out repairs could be a further ground to exonerate them from liability to the Claimant.

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



AMB Law

46 New Broad Street
London
EC2M 1JH

T: +44 (0)20 3651 5646
F: +44 (0)20 3651 5554
office@amblaw.co.uk

18 Epsilon House
West Road
Ipswich
IP3 9FJ

T: +44 (0)1473 276103

Alistair Bacon
Principal

T : 020 3651 5647
M: 07881 554062
E: abacon@amblaw.co.uk

Sutha Mohanadas
Trainee Solicitor

T : 020 3651 5704
smohanadas@amblaw.co.uk

Stephen Carter
Consultant

T : 020 7329 4242
scarter@amblaw.co.uk

The contents of this *Bulletin* are believed to be correct as at the date of publication. This information is provided for information only and is not intended to constitute legal advice. No liability can be accepted by AMB Law for any errors contained herein.