

# **Brake and another (Respondents) v Chedington Court Estate Ltd (Appellant)**

## **[2023] UKSC 29**

**Date:** 10 August 2023

### **Justices**

Lord Briggs, Lord Hamblen, Lord Leggatt, Lady Rose and Lord Richards

### **Background to the Appeal**

This appeal concerns the standing of a bankrupt to challenge the acts, omissions or decisions of the trustee of the bankrupt's estate under section 303(1) of the Insolvency Act 1986 (the "**IA 1986**").

Section 303(1) of the IA 1986 provides:

"If a bankrupt or any of his creditors or any other person is dissatisfied by any act, omission or decision of a trustee of the bankrupt's estate, he may apply to the court; and on such an application the court may confirm, reverse or modify any act or decision of the trustee, may give him directions or may make such other order as it thinks fit."

Section 168(5) of the IA 1986 is the equivalent provision applicable in the liquidation of a company, enabling "any person aggrieved" (which has been interpreted to include creditors and contributories of the company) to make applications as regards the acts or decisions of liquidators. By parity of reasoning, the approach adopted under section 303(1) applies equally to section 168(5).

### *Factual background*

Between February 2010 and June 2013, Mr and Mrs Brake (the "**Brakes**") and Patley Wood Farm LLP ("**PWF**"), an investment vehicle for Mrs Brehme, were in partnership (the "**Partnership**") carrying on an accommodation and events business at West Axnoller House (the "**House**"). Disputes arose between the partners, which were referred to arbitration. The arbitration concluded with a final award in favour of PWF, a costs order against the Brakes and the dissolution of the Partnership.

The Partnership's property included a cottage, adjacent to the House, registered in the names of the Brakes and Mrs Brehme (the "**Cottage**"). The Brakes lived in the House but would use the Cottage when the house was temporarily let.

In 2015, the Brakes were made bankrupt on the petition of PWF in respect of the unpaid costs of the arbitration. A trustee was appointed on 30 July 2015 (the "**Trustee**").

In July 2015, receivers of the Partnership's property, who had been appointed by its bank, sold the farm to a company called Axnoller Events Ltd ("**AEL**"). The Partnership went into administration in July 2016 and into liquidation in May 2017.

In February 2017, AEL was acquired by the appellant in the present appeal, The Chedington Court Estate Ltd ("**Chedington**"), a company owned by Dr Guy and his wife. On 8 November 2018, the Brakes were given notice to quit the House by Chedington and AEL. Both Dr Guy and the Brakes expressed an interest in purchasing the Cottage. Accordingly, on 18 December 2018, the liquidators invited bids for the Cottage from the Brakes and Dr Guy.

On 20 and 21 December 2018, both Dr Guy (on behalf of Chedington) and the Brakes (in their capacities as trustees of the Brake Family settlement (the "**Brake Trust**") submitted bids for the Cottage. The liquidators accepted Chedington's higher bid, subject to contract. The liquidators were not willing to apply to the court for an order removing the Brakes as registered proprietors of the Cottage. Instead, Dr Guy and Chedington agreed an arrangement with the Trustee under which the Trustee would purchase the Cottage from the liquidator with funds lent by Chedington and would then sell the Cottage to Chedington, making the necessary application to the court to obtain clean legal title to the Cottage (the "**Facilitation Agreement**"). Pursuant to a notice provided by the Trustee to Dr Guy, agents of Chedington entered the Cottage and changed the locks on 18 January 2019.

### *The proceedings*

The Brakes issued an application under section 303(1) of the IA 1986, both in their personal capacities as bankrupts and in their capacities as trustees of the Brake Trust, alleging that the Trustee wrongfully enabled Chedington to interfere with their right of possession of the Cottage.

Chedington applied to strike out the relevant parts of the application on the ground that the Brakes lacked standing under section 303(1) of the IA 1986. The High Court struck out the application.

The Court of Appeal dismissed the appeal brought by the Brakes in their capacities as trustees of the Brake Trust, because in that capacity they were third parties whose only interest was as disappointed under-bidders for the Cottage. By contrast, the Court of Appeal held that, in their personal capacities, the Brakes had standing because their interests were substantially affected by the impugned conduct of the Trustee and because, as bankrupts, they had a direct interest in the relief they sought. Chedington now appeals to the Supreme Court.

## **Judgment**

The Supreme Court unanimously allows the appeal. Lord Richards gives the only judgment, with which the other Justices agree.

## **Reasons for the Judgment**

An applicant will have standing under section 303(1), or section 168(5), of the IA 1986 in three categories of cases [99]. First, creditors have standing where their application concerns their interests as creditors, because the bankrupt's estate or the assets of the company in liquidation are administered under the terms of the statutory trust for their benefit as creditors. Second, where there is or there is likely to be a surplus, the bankrupt or contributories are also persons for whose benefit the estate or assets are being administered and they have standing in respect of their interests in the surplus. Third, there is a limited class of cases where creditors, bankrupts, contributories or others will have standing, but only in respect of matters directly affecting their right or interests and arising from powers conferred on trustees or liquidators which are peculiar to the statutory bankruptcy or liquidation regime.

The Brakes did not fall within any of these categories and do not therefore have standing under section 303(1) of the IA 1986 [100].

In their personal capacities as bankrupts, the Brakes did not have any legitimate and substantial interest in the relief sought because their possessory rights to the Cottage were unconnected to their position as bankrupts. The actions of the Trustee which they challenge were directed to them as persons in possession of the Cottage, not as bankrupts [80].

The appellants submitted that all that is required for the purposes of standing is that a trustee, in that

capacity, should have wrongfully interfered with an existing right of the applicant [81]. The consequences of this would be that any person whose rights were wrongfully interfered with by a trustee could apply for relief under section 303(1), provided only that the trustee was acting as trustee, and not (for example) in a personal capacity [82]. "Wrongfully" was taken to mean "unlawfully" in two senses [84]. First, it referred to conduct which is directly actionable by the complainant in any event, such as by an action in tort. The Court held that there is no sound basis for affording the complainant an alternative procedure for pursuing the claim just because the wrongdoer happens to be a trustee acting in that capacity, and there is no reason to think that the legislative intention behind section 303(1) was to provide any such alternative procedure [86]. Second, a complainant would have standing if the rights of the complainant were interfered with by the trustee acting beyond the trustee's statutory powers or in breach of duty as trustee [84]. The Court held that it is contrary to principle for a person to whom a duty is not owed to be able to seek relief in respect of a breach of that duty [87]. The enactment of section 304 of the IA 1986 demonstrates that it was not the legislative intention to enable such relief to be sought by third parties uniquely against trustees in bankruptcy under section 303(1) [88].

The Court noted that it was not the case that, if section 303(1) did not permit applications to be made in circumstances where the trustee has acted in breach of duty, the misconduct of trustees would go unchecked. Trustees in bankruptcy must be authorised to act as such pursuant to Part XIII of the IA 1986, normally by a recognised professional body. The maintenance of proper standards is the responsibility of those bodies, to whom complaints can be made in appropriate cases [98].

*References in square brackets are to paragraphs in the judgment.*

## **Note**

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available online. [Decided cases](#)