Order for possession of bankrupt's property sparks another round of litigation (Re Sheida Oraki)

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Restructuring & Insolvency analysis: John Briggs, barrister at South Square Chambers, discusses the latest developments in the long-running litigation of Re Sheida Oraki which shows how complex the execution of bankruptcy can get.

Re Sheida Oraki Oraki and another v Hall (trustee in bankruptcy of Sheida Oraki and another); Hall (trustee in bankruptcy of Sheida Oraki and another) v Oraki and another; Oraki and others v Hall (trustee in bankruptcy of Sheida Oraki and another) [2019] EWHC 1515 (Ch), [2019] All ER (D) 169 (Jul)

What are the practical implications of this case?

The latest judgment in *Re Sheida Oraki* throws into sharp relief the fact that an order that the bankrupt give up possession of a property obtained by a trustee in bankruptcy is not the beginning of the end of the process of realisation of the bankrupt's estate but potentially the beginning of another complex round of litigation relating to enforcement of the order.

A trustee in bankruptcy should ensure that the steps taken to obtain eviction of the occupants meet with the requirements of CPR 83 and give such notice of the proceedings to the bankrupt occupant and other occupants as will enable them to seek any relief to which they may be entitled.

In the event of unlawful re-occupation, it would be wise for the order for a writ of restitution or new writ of possession to be endorsed on its face with a penal notice complying with CPR 81.9.

What was the background?

The case has a lengthy background in which the bankrupts, Sheida Oraki and her husband Ardeshir Oraki, established a number of years after the bankruptcy orders made in 2005/2006 that these were based on 'fraud' and should be annulled on the grounds they ought not to have been made.

However, the deputy judge ruled that the debts to creditors and the fees costs and expenses of the bankruptcies due to the Official Receiver and the trustees in bankruptcy and their lawyers should be paid out of their estates. This ruling was upheld by the Court of Appeal in *Oraki v Dean & Dean (a firm)* [2013] EWCA Civ 1629, [2013] All ER (D) 170 (Dec).

The Orakis then sued the previous trustees in bankruptcy for damages for professional negligence but lost before Proudman J (2015) and their appeal was dismissed by the Court of Appeal in *Oraki v Bramston* [2017] EWCA Civ 403, [2017] All ER (D) 174 (May) (see also News Analysis: Examining trustees' liability in bankruptcy (Oraki and another v Bramston and Defty)) and permission to appeal dismissed by the Supreme Court. The legal costs involved in this disastrous litigation amounted to circa £1m.

A further and subsequent attempt by the Orakis in 2016 to extricate themselves from the bankruptcies by claiming that 'fraud unravels all' equally failed before the deputy and permission to appeal was refused by the Court of Appeal leading to further adverse costs orders.

An order back in 2008 for possession of the matrimonial home registered in Dr Oraki's sole name was effectively stayed during all this time but, eventually, in November 2017, the Chief Registrar (as he was known at the time) made an order that they give up possession on a new date.

Following final failure on the part of the Orakis to rescind the bankruptcies, the third trustee in bankruptcy (the trustee) obtained a writ of possession from the court on 17 December 2018 and enforced it two days later, on 19 December 2018. On 24 December 2018, the Orakis applied on a without notice basis obtaining an order from Barling J permitting

them to reoccupy the property pending the hearing of their application on the first day of the following term. Due to lack of time, the application and a cross-application by the trustee were adjourned as applications by order together with a further application by the Orakis seeking the review/rescission of the Chief Registrar's possession order of November 2017 and the setting aside of the writ of possession.

What did the court decide?

First, that the trustee had given the Orakis adequate notice of the proceedings in her solicitors' letter of 20 November 2018 preceding the issuing of the writ such that it complied with the requirements as to notice of the proceedings (CPR 83.13(8)(a)) as per Foskett J in *Partridge v Gupta* [2017] EWHC 2110 (QB), [2017] All ER (D) 118 (Aug)—see also News Analysis: Writ of possession and providing notice to tenants (Partridge v Gupta).

Secondly, the Orakis had misled the court (Barling J) in failing to exhibit the *Gupta v Partridge* letter, and the order suspending the writ should be discharged on this basis and none of the Orakis arguments relating to other sources of funds for paying debts and costs of the bankruptcies—or Dr Oraki's contention that she was not the beneficial owner of the property—was such as to justify a review of the possession order of November 2017.

Thirdly, given the Orakis' conduct the judge made an order endorsed with a penal notice excluding the Orakis from going near the property and ordered them to pay indemnity costs.

John Briggs specialises in domestic and cross-border insolvency, commercial and chancery litigation, professional negligence and disciplinary proceedings (involving insolvency practitioners), partnerships, financial services and proceeds of crime. Briggs has appeared in many high profile cases, particularly in the field of personal insolvency, insolvent partnerships and deceased insolvents. In Re Sheida Oraki he was counsel for Ms Hall, the trustee in bankruptcy.

Interviewed by Kate Beaumont.

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