



Wolloff v Patel: what is the jurisdiction of the First-tier Tribunal (Property Chamber) where a party is bankrupt?

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TRANSCRIPT

Welcome to your latest Property Law Blog.

In this blog I will be talking to you about the recent case of *Wolloff v Patel* and how the decision has confirmed the jurisdiction of the First-tier Tribunal in relation to beneficial interests cases where there's been a bankruptcy.

There is much case law around the issue of trusts and beneficial interests and what principles the courts must follow when determining whether a party has a beneficial interest in a property and if so, how much of a share they have.

Under the Trusts of Land and Appointment of Trustees Act 1996, TOLATA, section 14(1) states "any person who is a trustee of land or has an interest in property subject to a trust of land may make an application to the court for an order under this section." Under subsection 2(b) this can include "declaring the nature or extent of a person's interest in property subject to the trust, as the court thinks fit." The court would usually have regard to the matters under section 15 of TOLATA when determining an order under section 14.

However, where one of the parties with an interest in the property has been made bankrupt then section 15 will not apply. As stated in section 15(4) "This section does not apply to an application if section 335A of the Insolvency Act 1986 applies to it." Section 335A sets out the matters the court shall have regard to where an application has been made to the court under section 14 of TOLATA for the sale of land and the court has jurisdiction in relation to the bankruptcy.

It is clear from the legislation what the considerations are in relation to the sale of land where one of the parties with an interest has been made bankrupt. What has come to the forefront through the case of *Wolloff v Patel* is that the First-tier Tribunal (Property Chamber) does have the jurisdiction to determine whether the bankrupt has a beneficial interest in the land in the first place and this does not have to be determined by the court.

The appeal on *Wolloff v Patel* was heard in the Upper Tribunal (Lands Chamber) and the judgement was delivered by Mr Justice Fancourt on the 4 November 2019.

The facts of the case are that there were two registered proprietors of a property in Ilford. The proprietors had been friends since 2007 and subsequently purchased a property together. The proprietors were Mr Dhillon and Ms Patel, in this case the bankrupt and the

respondent. It was the respondent that provided part of the purchase price and the remainder was raised by way of a mortgage, made to both of them. The respondent lived at the property. The bankrupt did not live there. Mr Dhillon was declared bankrupt in October 2016.

Under section 42 of the Land Registration Act 2002 "The registrar may enter a restriction in the register if it appears to him that it is necessary or desirable to do so" for the purposes listed. Under section 43(1)(c) of the same Act "A person may apply to the registrar for the entry of a restriction... if – he otherwise has a sufficient interest in the making of the entry." Rule 93(j) of the Land Registration Rules 2003 confirms that "a trustee in bankruptcy who has an interest in a beneficial interest in registered land held under a trust of land, and who is applying for a restriction in Form J to be entered in the register of that land," has a sufficient interest.

In this case the trustees in bankruptcy made an application to the Land Registry for a Form J restriction to be registered against the property's title. Both the bankrupt and the respondent objected to the application, having received notice of it from the Land Registry. The respondent stated that she was the sole beneficial owner of the property and that the bankrupt was only on the legal title for the purposes of assisting her to get a mortgage. On the basis he had no beneficial interest in the property there was no need for a restriction, as there was nothing for the trustees to protect.

The parties could not resolve the issue and so the Land Registrar referred the matter to the First-tier Tribunal under section 73(7) of the Land Registration Act 2002. The First-tier Tribunal then had to consider whether it had jurisdiction to determine whether the bankrupt had a beneficial interest in the property and if it did, whether he had such an interest, or whether the property was held on trust for only the respondent.

The First-tier Tribunal determined that they did have jurisdiction under section 108(1) of the 2002 Act and that the property was held on constructive trust by the registered proprietors for the respondent only. Accordingly, the Tribunal directed the Land Registry to cancel the application for the restriction.

The appeal was made by the trustees in bankruptcy on the basis that the First-tier Tribunal did not have jurisdiction to determine whether the bankrupt had a beneficial interest or not, that that was something for the court to decide, as the court has exclusive jurisdiction to determine matters of fact or law in bankruptcy cases under the Insolvency Act 1986.

What the Upper Tribunal considered on appeal was the interrelationship between the relevant provisions in the Land Registration Act 2002, relating to dispute resolution and the jurisdiction provisions of the bankruptcy code, in the Insolvency Act 1986.

The matter had been referred to the First-tier Tribunal under section 73(7) of the 2002 Act. This states: "If it is not possible to dispose by agreement of an objection...the registrar must refer the matter to the First-tier Tribunal." It must be noted that under section 73(5)(b) the registrar "may not determine the application until the objection has been disposed of." So, the respondent's objection here needed to be disposed of before the application for registration of the restriction could be determined.

Section 108(1)(a) states that the adjudicator has the function of "determining matters referred to him under section 73(7)." The trustees on appeal said that the Tribunal had no jurisdiction to determine if the bankrupt had a beneficial interest in the property, as that would be inconsistent with the Insolvency Act. Under section 363(1) of the 1986 Act "Every bankruptcy is under the general control of the court and... the court has full power to decide all questions of priorities and all other questions, whether of law or fact, arising in any bankruptcy." Section 373 refers to the High Court and County Court having jurisdiction.

What the Upper Tribunal had to consider was whether the Tribunal's jurisdiction under the 2002 Act was impliedly excluded by the 1986 Act, or alternatively whether the Tribunal in cases of bankruptcy should direct parties to commence court proceedings where matters of fact or law are to be determined.

Mr Justice Fancourt commented in his judgement at paragraph 40 that "the right approach is to construe the language of each statute objectively, in the context of the Act in question and the legislative framework as a whole, with a view to avoiding if possible, rather than finding inconsistency." He felt that there is no conflict between the Acts. If there was then the Tribunal would not be able to determine any questions of fact or law where bankruptcy is involved. He stated that "the jurisdiction provisions of section 108 of the 2002 Act do not exclude such questions, nor do they require a mandatory direction to be given to start court proceedings in such a case."

Mr Justice Fancourt explained that in his judgement the provisions of the 1986 Act "do not prevent any matter properly falling within the jurisdiction of the First-tier Tribunal from being decided there." In this case the Tribunal needed to determine whether the bankrupt had a beneficial interest in the property, to see whether the objection of the respondent succeeded and therefore whether a restriction was necessary or desirable to be placed on the registered title.

He further considered that whether the bankrupt had a beneficial interest was not a question arising in the bankruptcy itself, as the question was whether he owned the beneficial interest before the bankruptcy was declared.

If the Tribunal wished to, they could direct "the matter" to be decided by the court and he observed that this may be more likely where there was a question of quantum but otherwise a decision by the Tribunal would "facilitate earlier and cheaper administration of the bankrupt's affairs" and would also provide for earlier protection of any creditors' interests.

In conclusion, the appeal was dismissed. Under section 73(7) of the 2002 Act the First-tier Tribunal has the jurisdiction to determine facts relating to the application for the restriction and the objection, so as to be able to direct the Land Registrar as to whether or not it is "necessary or desirable" for a restriction to be entered on the registered title. There is no need for the court to determine this and there is no need for the Tribunal to direct this matter to be decided by the court. Overall therefore, the process should be quicker, cheaper and protect any creditors' interests sooner.