

GOTHAM v. DOODES

BRIEFING NOTE

The recent decision of Lindsay J in *Doodes v Gotham* [2005] EWHC 2575 (Ch); The Times, 25th November 2005 will be of interest to banks and other lending institutions who hold Charging Orders or other security over property (and those advising them). Lindsay J held that the limitation period for the enforcement of Charging Orders (and charges) is ***12 years from the date of the making of the Charging Order or charge.***

Factual Background

In 1988 a bankruptcy order was made against Mr Doodes. In May 1989 Mr Gotham became the trustee in that bankruptcy and in 1990 applied for possession of the bankrupt's dwelling house. On 29 May 1992 that the court made a charging order absolute in the trustee's favour and removed the bankrupt's interest in the property from his estate under s 313(1) and (3) of the Insolvency Act 1986. In June 2004 the trustee applied for an order, inter alia, for the sale of the property with vacant possession. Mr Doodes argued that more than 12 years had elapsed between the making of the charge in 1992 and the application for sale in 2004 and that the trustee was barred from obtaining any substantial relief by virtue of s 20(1) of the Limitation Act 1980. The Chief Registrar held that the application was not statute barred: on appeal, Lindsay J allowed Mr Doodes' appeal.

Relevant Statutes

Section 20 of the Limitation Act 1980 provides (so far as material) that no action shall be brought to recover any principal sum of money secured by a mortgage or other charge on property after the expiration of 12 years from the date on which the right to receive the money accrued.

By s 3(4) of the Charging Orders Act 1979, a charge imposed by a Charging Order shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the debtor by writing under his hand.

Decision

The decision in *Doodes v Gotham* turned on the difficult question as to when the “right to receive the money accrued”. With reluctance and doubting that the result was just¹, Lindsay J found himself bound by the old authority of *Hornsey Local Board –v- Monarch Investment Building Society* (1889) 24 QBD 1 C.A to hold that a “right to receive” arose upon the very entry into the Charge, despite the chargor, immediately before the charge, having owed no debt to the chargee. Enforcement of the charge was therefore time barred by s 20 of the Limitation Act 1980.

Comments

- Banks/lending institutions should *ensure that systems are in place* to notify the expiry of 12 years from the making of the Charging Order/charge.
- Despite there being grounds for distinction (of which banks can take advantage) on the basis of the mortgagee’s right to recover all amounts of interest even where statute-barred before redemption, the *reasoning may well apply to mortgages* more generally as well.
- *The case law does not stand still in this area* (see for example *West Bromwich v Wilkinson* [2005] 1 W.L.R. 2303) and banks/lending institutions should be aware of changes as they happen.

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¹ Indeed, he allowed the appeal “with some reluctance and no enthusiasm”.