

Sarah Clarke

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Sarah's practice involves commercial and insolvency litigation and advisory work. She is developing a broad solid base of experience across all areas of business law including contractual disputes, commercial fraud, consumer credit, sale of goods and guarantees. Her experience of corporate and personal insolvency covers all aspects of administrations, bankruptcy and winding up petitions, CVAs and IVAs, asset recovery and misfeasance.

Cases for Sarah include:

R (on the application of Sangha) v Stratford Magistrates' Court [2008] EWHC 2979 (Admin)

A local authority had obtained liability orders against the Applicant for non domestic rates. After a statutory demand was served based on the orders the Applicant applied to the Magistrates court for an order setting aside the liability orders. The Applicant disputed liability to pay the sums on grounds that a tenant was in occupation and was accordingly liable to pay for the periods in question. The Applicant denied receiving copies of the bill or the summons leading to the liability order, which it was alleged had been misaddressed. The local authority gave evidence to the Magistrates Court that they were not able to produce copies of bills and reminder notices and the copies of these documents produced by the Defendant must have been the originals received by him. The Magistrates accordingly concluded there was no procedural error giving rise to the order and dismissed the application.

The Applicant sought judicial review of the decision of the Magistrates Court. Sarah Clarke acted for the local authority.

The application was dismissed.

Before a magistrates' court set aside a liability order it had to be satisfied that: (i) there was a genuine and arguable dispute as to liability; (ii) the order was made as a result of a substantial procedural error; and (iii) the application was made promptly.

Although it the court was prepared to assume that there was a genuine and arguable dispute as to liability, on the evidence available, the Magistrates court had been entitled to conclude that the claimant received the bill and the reminder and also, due to the consequential doubt arising as to his credibility, the liability order and the summons. Accordingly, the order had not been made as a result of a substantial procedural error. Further, the claimant had not acted with sufficient promptness to attack the liability order and there was potential for significant prejudice on behalf of the local authority.

One TV Plc v Erdam [2009] All ER (D) 46 (Mar) [2008] All ER (D) 159 (Dec)

Sarah acted for the respondent to application to set aside default judgment which was the basis of a bankruptcy petition.

Held: It was apparent that the application to set aside the default judgment had not been made promptly; it was made two-and-a-half-years after the judgment had been entered and materially after the company's letter of 9 March 2006. It was also significant that the two previous applications to set the judgment aside had not been attended by E and the liquidators for the company had expended substantial costs in attempting to enforce the judgment. In those circumstances, it would be unusual for the court to set a judgment aside unless a substantial argument could be made for asserting that the judgment had been mistakenly given. An analysis of the instant case had presented no such strong argument.

Bankruptcy - Jurisdictions - Centre of Main Interests

Bankruptcy order made against a debtor who was at the time of presentation of the petition resident in Spain. Registrar Simmonds found the court had jurisdiction to open main proceedings on grounds that centre of main interests was in England. The petition debt was a debt was an unpaid business debt; applying *Theophile v The Solicitor General* [1950] AC 186 and *Re a Debtor (No.784 of 1991)* [1992] CH 554 there was a deemed continuation of business until this debt was paid which gave rise to a prima facie case that the debtor's centre of main interests was in England. Also the move to Spain occurred at a time when he was in a parlous financial position and it is well established a departure for the purpose of forum shopping will not change the centre of main interests: *Shierson v Vlieland Boddy* [2005] BCC 949.

Re A Debtor

Bankruptcy

Sarah Clarke acted for an applicant seeking annulment of a bankruptcy order in the High Court on grounds of payment in full. The annulment was to be funded by the bankrupt's wife remortgaging a jointly owned property. The bankruptcy debts had not been paid in full but the solicitors dealing with the remortgage held bankers drafts for sums which would cover all the bankruptcy debts and expenses and undertook to pay these sums upon an annulment order being granted.

Held: Deputy Registrar Cheryl Jones made the annulment order on terms that the order was not to be drawn up until the Official Receiver confirmed all debts and costs had been paid. The Deputy Registrar distinguished the situation where the solicitor held bankers drafts in the names of the creditors from a situation where monies were held in a solicitor's client account and were at risk if the solicitors practice was intervened before the undertaking was fulfilled. *Halabi v London Borough of Camden and Another* [2008] ALL ER (D) 213 (Feb) applied.

Goel v Pick [2006] EWHC 833 (Ch); [2007] 1 All ER 982, [2006] BPIR 827

Bankruptcy

An appeal against a finding in favour of a trustee in bankruptcy on his application that the transfer of a distinctive vehicle registration mark was void or was a preference pursuant to s.340 of the Insolvency Act 1986.

Ferris J held: A vehicle registration mark was an item of property only in a very qualified sense, it could not properly be described as a chose in action and there was no proprietary interest capable of being assigned.

The trade in valuable Vehicle Registration Marks is based not on a proprietary interest in those marks, but on a statutory system of retention and nomination of those marks.

Although the issue of a preference did not arise following Ferris J's findings on the facts Ferris noted the following:

Had the transfer of the mark been effective it would have constituted a preference. Even though no proprietary interest would have passed, the recipient of the mark would have been advantaged by the ability to utilise the rights of retention and/or nomination.

The definition of a partner in s.435 of the Insolvency Act 1986 did not include a former partner, but partners would be associates as defined by s.435 until the affairs of the partnership were wound up.

Re Muritala (Unreported) Registrar Simmonds

Bankruptcy - Tomlin Order

This was an interesting issue on a bankruptcy petition which was being defended with the assistance of PILARS (pro-bono bankruptcy representation pilot scheme)

A bankruptcy Petition was presented against M based on a default judgment. An application to set aside the default judgment was compromised by a Tomlin order. The schedule to the Tomlin Order provided that judgment would be set aside and the M would pay the debt upon which the judgment was based in full with costs. M failed to comply with the terms of the Tomlin Order and obtained a series of adjournments to the bankruptcy petition. By the final hearing of the petition the Petitioner had obtained a further order of the court providing for payment of the debt by way of enforcement of the terms of the schedule to the Tomlin Order. The Petitioner also sought to rely upon the fact that the Petitioner had only agreed to set aside the default judgment because M had claimed this was necessary to enable him to make payment.

Registrar Simmonds found that the court had no jurisdiction to make the bankruptcy order and had no option but to dismiss the petition.