

RECOVERING DEBTS

Can the early bird really catch the worm....?

In these uncertain economic times, where some businesses are struggling financially, it is worth bearing in mind that a creditor who acts quickly to try and recover a debt due from an individual, may be able to secure an advantage over other “inactive” creditors.

The Court of Appeal in the recent case of Nationwide Building Society –v- Wright [2009] gave valuable guidance on the legal position where a creditor obtains a final charging order over an individual debtor's property, in circumstances where the debtor later goes bankrupt. This case confirms that if a creditor properly obtains a final charging order before a bankruptcy order is made, the final charging order should ordinarily stand unless there are some “additional features” which would justify the charging order being discharged. The effect of this is that, in such circumstances, the proactive creditor will be a secured creditor (to the extent that there is equity in the debtor's property) and will have gained an advantage over any other inactive debtors who have not obtained a charging order and who will only rank as unsecured creditors.

Safeguarding

Clearly, taking court action to recover debts quickly can be advantageous if a final charging order can be obtained prior to the possible complete downfall and bankruptcy of a debtor.

Although a final charging order does not necessarily put money into a creditor's pocket immediately, there can be little doubt that a creditor with a final charging order is in a strong position to recover his debt (to the extent that there is equity) when the debtor wishes to sell ... and that time does eventually tend to come around.

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Her litigation practice is predominantly property-based with particular expertise in landlord and tenant disputes, dilapidation issues and enfranchisement.

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