



Legal update

A receiver's duty of care – to whom and to what extent

At first glance, the circumstances that led to this action look like a case of the receivers riding roughshod and without care over the interests of a borrower in favour of their appointer. The duty of care of a receiver has been the subject of case law before and this case really supports what we already know – that the primary duty is to the receiver's appointer (a secured creditor), but with secondary duties to the borrower to act in good faith and to not unfairly prejudice it.

This judgement went a little further, saying that to breach the good faith standard would require more than negligence. It goes on to say that it would require even more than gross negligence – a claimant would have to evidence the complete opposite of good faith – bad faith, driven by dishonesty or improper motive.

The Court found against the borrower on most counts but did award a compensatory sum for a genuine mistake made by the receiver's conveyancers.

It is interesting that the Court has taken this firm line and one would hope that this would be an unachievably high bar for anyone to prove, which will give some comfort to receivers across England and Wales as they carry out their duties.

That said, receivers must be wary of being unduly influenced by their appointer or other parties, as acting with anything less than complete independence could lead to allegations of collusion, exposing them to the risks of challenge that the Court has, indirectly, clarified would be in breach of a receiver's duties.

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