

# PERSONAL INSOLVENCY

**“Delay always feeds danger”**

## **A bankruptcy case study – the problem**

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**Christopher Brockman (1985)** recently joined the Guildhall Insolvency team from Blake Lapthorn Linnell where he was a partner in the Commercial Litigation department, specialising in corporate and personal insolvency. Christopher spent time as a solicitor with a leading London firm before moving to the South Coast. Christopher acts on all aspects of insolvency, from administrations to bankruptcy, and is consistently recommended in the legal directories. He is a fellow of R3 and a member of the Insolvency Lawyers' Association.

**Paul French (1989)** has an insolvency practice involving all aspects of litigation and advice, ranging from the bankrupt's matrimonial home to multi-million pound claims by administrators. In addition, he has particular experience of bankruptcy and personal pension schemes. In the last year, his notable cases have been in corporate insolvency. He has represented a local authority in an application to determine the extent to which non-domestic rates are an administration expense. He also successfully represented a group of 25 publishers, arguing that in the liquidation of a book distributor they had proprietary claims worth some £2.5 million which stood in priority to the general body of unsecured creditors in excess of £5 million.

Paul is an editor of the *Bankruptcy and Personal Insolvency Reports*, as well as having contributed to *Insolvency and the Enterprise Act 2002* (Jordans). Paul is a full member of R3 and a member of the Insolvency Lawyers' Association.

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#### The facts

1. A bankruptcy order was made against Mr Bundy in 1990 on a petition of HM Customs & Excise who were owed £10,000. The bankruptcy debts were £20,000 and the only assets available were a property, 2 Osborne Road, and two shares in a dormant company, Bundy Services Limited. The property and shares belonged wholly to Mr Bundy but had no value at the time, 2 Osborne Road having no equity and the shares having no value as the company had no assets and had never traded.
2. Mrs Clarke was appointed as trustee in bankruptcy in 1991. She applied for and obtained a charge over 2 Osborne Road under s.313 of the Insolvency Act 1986. The order made by the county court merely provided: “That a charge be imposed on 2 Osborne Road pursuant to s. 313 of the Insolvency Act 1986”. The charge was never registered in any way, and the trustee took no further action.
3. In 1993 Mr Bundy obtained his discharge.
4. In 1995 2 Osborne Road was considerably extended and renovated. The costs were borne entirely by Mrs Bundy who had inherited money on the death of her mother. Mr and Mrs Bundy entered into a trust deed (properly documented) giving Mrs Bundy a 50% interest in the property in consideration of the contribution she had made to the property. She knew nothing about the charge.
5. In 1995 Mr Bundy revived Bundy Services Ltd which soon became a profitable company with a considerable turnover, not least of all as a result of profitable introductions made to the company by Mrs Bundy who was entitled to a 10% commission on work introduced by her. By 2003 Mrs Bundy was owed £180,000 commission. Mr Bundy was and remains the sole director; there is an accountant who acts as company secretary.
6. In 2003 Mr and Mrs Bundy fell out and there were matrimonial proceedings which culminated in 2004 in an order (made in the Family Division of the High Court and not by consent) giving Mrs Bundy 75% of the matrimonial home and directing Mr Bundy to procure that Bundy Services Ltd pay her £180,000 in respect of commission and a further £100,000 out of the company. Only £50,000 of the latter has so far been paid. The trustee has only recently discovered this.
7. The trustee says that with interest and costs £150,000 is needed to pay creditors in full.

#### The trustee’s proposed applications

8. The trustee wishes to apply for:-
  - 8.1. an order for sale of 2 Osborne Road (which now has equity in excess of £150,000); and
  - 8.2. an order for the payment by Mrs Bundy of the monies paid out of Bundy Services Ltd on the basis that:
    - 8.2.1. the claim for commission was unsubstantiated (there was no written agreement); and
    - 8.2.2. the order of the Family Division rendered Mr Bundy in breach of his fiduciary duty to the company in which the trustee has an interest as shareholder

9. The trustee also wants to stop the payment of the second tranche of £50,000.

**Questions**

10. The trustee wants to maximise realisations for the bankruptcy estate. What can she do along the lines described above or otherwise?
11. Mr and Mrs Bundy want to maintain the status quo. Are they safe?
12. What would you advise:
  - 12.1. the trustee;
  - 12.2. Mr Bundy; and
  - 12.3. Mrs Bundy?

**Christopher Brockman and Paul French, Guildhall Chambers**