

Claim Case Study: Lender's security upheld, despite dubious property transfer and bankruptcy



Just Retirement had its security against a property upheld, despite the property having been transferred by a husband to his wife for no consideration shortly before he was declared bankrupt.

What was the background to the claim?

In autumn 2009, Mr X transferred a property to his wife without any monies being paid. Mrs X obtained a mortgage on the property in October 2009 from Just Retirement, the insured lender.

A few months later in January 2010, Mr X was declared bankrupt. Looking into Mr X assets, the Accountant in Bankruptcy noticed the recent transfer of the property, allegedly for no consideration.

They claimed that Mrs X's title to the property was challengeable and wanted the property transferred back to Mr X.

It contended that it was entitled to reduce the disposition granted by Mr X in favour of his wife on the basis that it was a challengeable alienation. It was suggested that Just Retirement should have known about the transfer prior to approving the mortgage.

How did First Title approach the situation?

Panel solicitors were instructed. They considered there was a defence that after the alienation, Mr X's assets were greater than his liabilities. In addition, panel solicitors considered that the insured lender had acquired its security for value and in good faith.

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Communication took place between panel solicitors and the Accountant in Bankruptcy and the insured lender's position was put forward.

What was the outcome?

Eventually, the Accountant in Bankruptcy agreed that they would not challenge the insured lender's security.

Panel solicitors proposed that the best way to formalise the agreement not to challenge, was either to seek an order confirming the insured lender's security would remain unaffected, or to have the insured lender seek a declaration by way of a counterclaim.

The court eventually ordered the property to be transferred back to Mr X, with the insured lender's charge remaining attached to the property. The matter was, therefore, closed.

Sue Rose, equity release property manager at Just Retirement said:

"I was very pleased with the way the claim was handled [by First Title] and am grateful for all the information, written and verbal, which you provided during the course of the claim. For us, this is crucial as we have not come across the situation before and needed to have our position and various options explained to us in detail. The regular communication was very much appreciated."

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