

Insolvency and Bankruptcy

With more thought, could there be fewer losers?

by Brian Levy



I sometimes wonder how some respected bodies get away with being so short sighted time and time again, resulting in others losing out.

Here is a typical case:

I am representing an eminent doctor who until fairly recently enjoyed a highly successful lifestyle from his NHS and private practices.

Unfortunately his financial affairs got out of hand and the Revenue wanted to recover substantial arrears of tax. He took advice and decided that he should

present an Individual Voluntary Arrangement (IVA) to stop a bankruptcy order being made against him. The arrangement was to propose to all unsecured creditors a settlement of approximately 50p in the £.

The Revenue held the decisive vote in relation to the IVA proposal and surprisingly rejected it, resulting in a bankruptcy order being made against the client.

Subsequently my client's Trustee in Bankruptcy commenced an investigation to ascertain how much money could be squeezed out of him for the benefit of unsecured creditors.

The Trustee's approach towards my client was like any other investigation of this kind. It soon transpired that my client could not or would not co-operate with the Trustee.

The Trustee eventually realised that he had no choice other than to make an application to the Court.

At the time of writing this article I am in the process of dealing with the Trustee's application which is yet to be determined by the Court. It requires orders from the Court for my client to provide comprehensive financial information. Considerable legal fees will now be incurred by the Trustee resulting in the creditors getting considerably less.

Let's now consider alternative approaches to the Trustee's pending litigation. Having realised that progress could not be made with the bankrupt, the Trustee could have instructed independent forensic accountants to investigate the bankrupt's financial affairs. Their independent report would have enabled a negotiation to take place and also allowed the Trustee, armed with the report, to apply to the Court. (*cont. page 2*)

Two Partners Join the Commercial Dept. in London

We welcome Maria Anassutzi and Greg McDonagh who have both recently joined our Commercial Department in London. Maria will head our Intellectual Property and Information Technology team and Greg will add much needed additional capacity to our Corporate Commercial team. Their expertise will add a new dimension to the service we give our commercial clients and allow our London office to continue to grow.



Returnees and Qualifiers

A warm welcome back to Linda Davey and Alex Haider. Linda returns to us after starting her family, and we congratulate her on the birth of her baby girl earlier this year. Alex returns after taking some time to fulfill his ambition of traveling round the world.

We congratulate Sadia Patankar and Jaspreet Patter on qualifying as solicitors during the summer. Sadia joins our Commercial Property Department in Slough and Jaspreet has joined our Corporate Commercial Department in London.

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Intellectual Property

What it is and why it is important for your business

by Maria Anassutzi

Intellectual Property comprises a variety of rights such as patents, copyrights, design rights and trademarks, which in turn protect inventions, brand names, photographs, music, software, paintings and many other creations of the mind. In a world where these are increasingly sought, the collective value of the associated Intellectual Property has never been greater. It not only protects, but also adds value to your business, builds up its goodwill, increases its revenue and profits, provides competitive market advantage, and helps raise finance and facilitates future investments. It is therefore surprising that many businesses, big and small, do not fully capture and exploit the Intellectual Property created through or for their businesses.

A patent protects an invention that is new and has an industrial application. It prevents other businesses from copying and unfairly exploiting such invention, giving the rightful owner the right to maximise their invention and gain a rightful competitive advantage against its competitors. Also allowing them to



increase their revenues by granting licenses or selling the patent to a third party. Consequently filing a patent application before any disclosure is made to the public is crucial.

Copyright, on the other hand, protects original literary works such as instruction manuals, computer programmes, musical or artistic works.

A registered trademark represents the legal basis for the development of brand identity, which is a crucial

step in developing the business strategy of a growing business.

Intellectual Property rights differ in terms of duration and whether a formal process of registration by the owner is required to afford protection and monopoly rights to the owner or whether these rights arise automatically upon creation.

A carefully prepared Intellectual Property management plan, consistent with the business strategy, has several advantages. It allows the business to determine whether it is more effective to develop themselves or buy in the necessary Intellectual Property rights. It ensures the business can be protected from potential litigation by third parties claiming that a specified act of the business infringes that party's intellectual property. It allows the business to maximise its revenue and profits by licensing and selling its intellectual property. It can also give competitive advantage, important if the business is looking to raise finance or it operates in a highly competitive market. Lastly it helps to protect the business from inappropriate use of its intellectual property by other parties.

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Insolvency and Bankruptcy (cont.)

A further option is where an IVA has been proposed unsuccessfully and subsequently a bankruptcy order has been made the Trustee in Bankruptcy should be given statutory power to re-open the voluntary arrangement and then compel its acceptance for the benefit of all the unsecured creditors. Do remember that in this case the Revenue held the voting rights and although it suffered a substantial loss, losses suffered by other unsecured creditors could have literally put them out of business.

An alternative means of producing a fairer result for unsecured creditors would be to allow any such creditors who hold a significant financial

interest in the proceedings to make an application to the High Court for a review of the outcome of any unsuccessful IVA. This would give the High Court power to overturn a failed IVA since the Court would then be in the position to consider the interests of the body of creditors as a whole rather than any individual creditor such as the Revenue.

I daresay that within the next 6 months or so I will know the outcome of the Trustee's pending application against my client and whether in fact it has been financially worthwhile.

Please contact Brian on 020 404 9640, or email: blevy@hclaw.co.uk.

Personal Injury Case Won Against All The Odds

by Dean Nicholls

Honor -v- Lewis (2005)

On the morning of 9th September 1994 Gavin Honor (aged 11) was run over on his way to school sustaining devastating brain damage. Although Gavin made remarkable progress it was clear that his brain injury was permanent. He desperately needed therapies and care to improve his quality of life but he lacked the funds to purchase that specialist help. His parents initially had no choice but to give up their jobs to become full time carers.

Eyewitnesses stated that Gavin had run across the road and that the driver did not have a chance to stop. Gavin's parents were advised by his local solicitors that he had no chance of recovering damages against the motorist. Consequently Gavin's parents all but gave up hope of making a claim for their son.

Many years later Gavin's parents approached Harris Cartier LLP. The file was read by Dean Nicholls, one of our Litigation Partners. He felt there might be a case to answer and with the family's agreement started to put a case together. This involved hiring enquiry agents to trace the witnesses who had long since moved. By careful questioning the basis of a case began to emerge. Specialist Accident Reconstruction evidence and evidence from a Consultant Neurosurgeon was obtained in order to fully investigate and strengthen the case.

The Defendant's lawyers fully disputed the case, blaming Gavin entirely for the accident. Despite this, shortly before Trial they offered a seven figure settlement. Even though Gavin might still receive no compensation, he was advised to reject the offer.

As a consequence the case proceeded to a liability Trial. At Trial it became clear that the Defendant had not passed his Driving Test and was neither accompanied nor displaying "L" plates. The witness evidence was, on balance, that Gavin walked, not ran, across the road and that he had been clearly visible to other road users.

Expert witnesses told the Court that the Defendant had not slowed down at all. In addition the Defendant failed to warn Gavin of his approach. It was also shown that had the car been going slower, Gavin's injuries would have been significantly reduced to the extent that he might have been unhurt.

The Judge found that the driver was negligent but Gavin was partly (20%) to blame. At a later Trial to decide the amount of the damages, Gavin was awarded a gross sum of £3,700,000 or £3,000,000 after deducting the 20%.

As a consequence of receiving these substantial damages Gavin now has a specialist care manager and employs an enabler who works with



him every day. He also employs a specialist physiotherapist who has made a real difference to his life. Gavin has even started to participate in hobbies such as swimming and even golf. He also recently abseiled down the Tyne bridge to raise money for charity. The funds will now help to ensure that Gavin's specialist needs are met for the rest of his life.

Dean saw a glimmer of hope and had been prepared to back his judgment. Gavin now has the help to bring some dignity and excitement back into his life. The moral of the story is that all cases, not only those of the utmost seriousness like Gavin's, should be thoroughly analysed by specialist lawyers in order to help build a case and achieve a successful outcome.

Please contact Dean on 020 404 9632, or email: dnicholls@hclaw.co.uk.

Cerebral Palsy Settlement

by Chris Gooderidge

The High Court in London has recently approved the settlement of a case concerning a cerebral palsy child when the settlement of £4.255 million was approved in the case of "T -v- H Trust".

The case was dealt with by Chris Gooderidge, Senior Litigation Partner at Harris Cartier LLP and his team.

The Judge commented on the complexity of the case, bearing in mind that "T" has a normal life expectancy but will never be able to work due to his behavioural and other problems.

The award ensures that the future for T is assured.

Please contact Chris on 01753 734821, or email: cgooderidge@hclaw.co.uk.



Corporate Responsibility - Serious Fun

The Partners and staff of Harris Cartier take Corporate Responsibility seriously but that doesn't mean they can't have some fun whilst doing it.

Paul Norris, our Chief Executive, is the Company Secretary of the Slough Business Community Partnership. Harris Cartier are founder members of this organisation which is drawn from the private, public and voluntary sectors in Slough and was formed to combine business skills with voluntary and public sector expertise



to maximise social, economic and cultural development. Paul also undertakes an annual bicycle ride for under privileged children. This year it was a coast to coast ride across England.



Nina Gurney, an Associate in our Commercial Litigation department in Slough, decided that although she had never rowed before she and seven other local business women, equally novice, would race as a racing eight in the Reading Regatta and raise money for the East Berkshire Women's Association. Their hard work and early morning practises in the rain paid off and they came third in a field of nine.

Still on the water, Harris Cartier sent

a team to Docklands to compete in a Dragon Boat Race. This was to raise money for the Back-Up Trust, a charity for spinal injury victims extensively supported by Harris Cartier. In fact Kent Pattinson, the senior Partner in our Personal Litigation Department, and Beth Sanders, a trainee in our Corporate Commercial Department in London, have recently come back from a long weekend run by Back-Up accompanying disabled people in wheelchairs whilst they trekked over Exmoor.



These are just a few ways Harris Cartier have tried to make a difference to the people and places that we come across during our working day.

We value our Clients' opinions, so tell us what you think of Legal-i.

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