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Starratt v Turner: A Closer Look

Claims which are reported to LIANS often arise from one of two underlying causes: (1) poor communication between lawyers and their clients, and between opposing counsel, and, (2) failures in office systems and procedures. These two underlying causes of claims account for more than 80 per cent of all claims against lawyers. Much less common are claims which arise from a lack of knowledge or flawed application of the law. However, one recent claim file dealt with the applicability of *Starratt v. Turner* (1989) 78 CBR (NS) 83 (NSCA) in circumstances where the judgment debtor had been discharged from bankruptcy.

The issue considered was the following: what is the effect of a discharge from bankruptcy on the enforceability of a judgment against land sold by the judgment debtor to a third party?

Answer: after discharge of the bankrupt judgment debtor, the judgment can no longer bind the land, unless it falls within the s. 178(1) exceptions in the Bankruptcy and Insolvency Act.

This conclusion is from an opinion prepared by Gus Richardson Q.C., the full text of which is on the LIANS web page under Real Estate Resources. Below is a brief summary of the issues discussed in greater detail in Mr. Richardson's opinion.

- Starratt stands for the proposition that an assignment in bankruptcy by a judgment debtor does not affect any judgments that have been registered against land owned by the judgment debtor and then transferred away from the judgment debtor before the assignment into bankruptcy. The judgment remains a charge against the land. Anyone who purchases or accepts a transfer of the land in question will receive the land subject to the judgment debt.
- The Starratt case did not deal with the effect of the discharge of the bankrupt.
- *Franklin v Schultz* (1967) 62 DLR (2nd) 643(Ont. CA) deals with the Sheriff's ability to execute writs of fi. fa. against lands owned by a third party after the judgment debtor was discharged from bankruptcy. The decision supports the proposition that after discharge of the bankrupt judgment debtor, the judgment can no longer affect the lands.
- There are exceptions to the rule in *Franklin* pursuant to section 178(1) of the Bankruptcy and Insolvency Act.

For the full article go to www.lians.ca.

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