

## ***Mr Sam Dias v London Borough of Havering***

**[2011] EWHC 172 (Ch):**

### **Bankruptcy, jurisdiction and non-domestic rates**

#### **BACKGROUND**

*Held: where a bankruptcy petition is presented on the basis of a liability order for unpaid non-domestic rates, the Bankruptcy Court may only look behind that order if first satisfied that the order was obtained by fraud, collusion or a miscarriage of justice. Further, the fact that the procedure for obtaining a liability order is relatively summary in nature does not mean that the debtor has suffered a miscarriage of justice.*

*Thomas Evans, instructed by Sharpe Pritchard, appeared for the Respondent*

Where a Petition is founded upon a judgment debt, the Bankruptcy Court will not look behind the judgment unless it is first established that it was obtained by fraud, collusion or a miscarriage of justice. Formerly, however, this general rule seemed not to apply to a liability order for non-domestic rates granted by a Magistrates' Court. Such orders were deemed to be the result of a mere "rubber stamping" exercise and so the Bankruptcy Court would, at the election of the debtor, examine the basis upon which the order was made (London Borough of Lambeth v Simon [2007] BPIR 1629). This jurisdiction was successfully challenged.

#### **THE FACTS**

Commercial premises in Romford were demised to the Appellant Mr Dias, who became the rateable occupier for the purposes of section 43 of the Local Government Finance Act 1988. Upon his failure to pay the rates, two liability orders were granted by the Havering Magistrates' Court, following which the Respondent London Borough issued a Statutory Demand.

Subsequently, Mr Dias adduced a "Licence to Operate" by which, he claimed, he had granted exclusive occupation of the entire premises to a company of which he was the sole director and shareholder. He argued that Havering ought therefore to pursue his company and not him personally.

An application to set aside the Statutory Demand was dismissed with costs. At that stage, the Court would not examine the merits of the case upon which the judgment debt was founded. However, at the first hearing of the Petition, following London Borough of Lambeth v Simon, the Court held that it had jurisdiction to look behind the liability orders as a matter of routine and so a hearing was set down.

Upon the evidence of Mr Dias, it was held that he was, in spite of the Licence, the rateable occupier and so was liable for the rates slightly in excess of £190,000. The learned Judge however did not proceed to adjudge Mr Dias bankrupt but adjourned to allow him time to consider his financial options. Mr Dias appealed.

ALERTER 7 FEBRUARY 2011

### On appeal to the High Court

The rolled-up hearing for permission to appeal was heard by Mr Justice Henderson on 10 December 2010 and judgment was handed down on 4 February 2011.

Havering argued that the High Court did not yet have jurisdiction to hear the appeal as no order had been made which could form the basis of the appeal. The learned Judge at first instance had given reasons only before adjourning (Re Mathew [2001] BPIR 531). His Lordship, however, declined to follow Re Mathew and held that an order had been made which could form the basis of an appeal.

His Lordship went on to state that the established general rule is the Bankruptcy Court is not bound by a judgment of another court and has a wide jurisdiction to look behind orders. However, it may only do so upon being satisfied that the order in question was obtained by fraud, collusion or a miscarriage of justice (see paragraph [34]).

However, it was argued, following Lambeth v Simon, that this rule does not apply to liability orders, which the Court is entitled to look behind as a matter of routine. Liability orders are granted as part of a “rubber stamping” exercise, without the protection of a full judicial process and with limited rights of appeal.

**Held:** The general rule does apply to liability orders (Lambeth v Simon not followed). Further, the summary nature of the procedure for obtaining an order does not of itself give rise to a miscarriage of justice. Liability orders can only be obtained (per SI 1058 of 1989) following:

*“a fairly elaborate procedure [in which] the defendant has been given an opportunity to explain why he has not paid. The court may make the order only if it is satisfied that the sum has become payable, and that it has not been paid. If the defendant thinks that the order has been wrongly made, he is in principle entitled to challenge it either by judicial review or by an appeal by case stated.”* [33]

His Lordship therefore noted that:

*“it is true that the liability order procedure is of a relatively summary nature, but it still has the basic hallmarks of a judicial process, and it cannot in my judgment be stigmatised as inherently unfair.”* [37]

**ALERTER** 7 FEBRUARY 2011

Further, Mr Dias:

*“took no active steps to present his case to the court, nor did he challenge or appeal against either of the liability orders.” [33]*

Accordingly, the rule in Lambeth v Simon must be doubted: a Bankruptcy Court cannot look behind a liability order unless the debtor or interested party first demonstrates that it was obtained by fraud, collusion or a miscarriage of justice.

In the present case, the liability orders had not been obtained by a miscarriage of justice (see paragraphs [36]-[38]) and so the Bankruptcy Court had no jurisdiction to look behind them.

In any event, Henderson J held that Mr Dias was liable for the rates. His Licence, through which he purported to divest himself of exclusive occupation, did not operate as he had hoped (see paragraphs [39]-[41] for reasons) and he had remained in rateable occupation.



*The Respondent was represented throughout by Thomas Evans of Henderson Chambers upon instructions from Sharpe Pritchard.*

*Thomas receives instructions on a broad range of common law, consumer finance and property matters. For more information, please see his CV (which can be [viewed here](#)) or telephone him in chambers.*

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