



**St John's
Buildings**

CASE NOTE

CARVILL-BIGGS & ANOR V READING [2025] EWCA CIV 619

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St John's Buildings

This case note considers the recently decided Court of Appeal judgment of [Carvill-Biggs & Anor v Reading \[2025\] EWCA Civ 619](#) on whether an administrator was entitled to possession of a property, pursuant to section 234 of the Insolvency Act 1986, which the director of the company in administration was occupying as a trespasser.

BACKGROUND

The Applicants/Respondents to the proceedings were the joint administrators of Rose Cottage Farm Limited ("the Company"), Mr Simon Carvill-Biggs and Mr Miles Needham ("the Administrators").

The Respondent/Appellant was Mr Ashley Reading who was the director of the Company ("the Director").

The dispute concerned a property which the Company held freehold title of ("the Property"). In August 2022, the Company obtained a loan ("the Loan") from TFG Capital No.2 Limited ("TFG2"), which it secured by way of a mortgage over the Property ("the Mortgage") and a floating charge over any other assets or undertakings of the Company ("the Floating Charge"). The Mortgage contained a covenant that the Property should not be occupied as a dwelling house.

In early 2023, the Director and members of his family occupied the premises as their residence. The Director did not contend there was any agreement between the Company and the Director entitling him and his family to reside in the Property.

In April 2023, the Company defaulted in payment of the Loan. In August 2023, TFG2 appointed two individuals to be joint receivers of the Property ("the Receivers") and conferred upon the Receivers all the powers conferred on receivers by the Law of Property Act 1925 ("LPA 1925"). Subsequently, TFG2 issued proceedings against the Company and Director, pursuant to CPR 55, seeking an order for possession of the Property.

In November 2023, the first hearing was adjourned and a directions hearings listed for May 2024. Shortly afterwards, TFG2 acting as the holder of the Floating Charge, pursuant to paragraph 14 of Schedule B1 to the Insolvency Act ("Schedule B1"), appointed the Administrators.

In March 2024, the Administrators issued an application under the Insolvency Act in the name of the Company and in their own names (the "Application") for amongst other things "that Mr. Reading and all current occupiers of the Property deliver up vacant possession of the Land "to the Applicant"".

After a hearing in April 2024, HHJ Klein (the "Judge") made an order joining three members of the Director's family as respondents to the Application and adjourning the matter for a hearing in May 2024.

HIGH COURT

The Judge considered the Application to have been made pursuant to section 234 of the Insolvency Act 1986, which states:

(1) This section applies in the case of a company where—

- (a) the company enters administration, or*
- (b) an administrative receiver is appointed, or*
- (c) the company goes into liquidation, or*
- (d) a provisional liquidator is appointed;*

and “the office-holder” means the administrator, the administrative receiver, the liquidator or the provisional liquidator, as the case may be.

(2) Where any person has in his possession or control any property, books, papers or records to which the company appears to be entitled, the court may require that person forthwith (or within such period as the court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the office-holder.

The Judge set out his view of the requirements for the Administrators to succeed in the Applications, which were:

(i) that the Respondents are in possession or control of the Land, (ii) that the Company is entitled to possession of the Land, (iii) that the Land is property covered by section 234, (iv) that an order under section 234 furthers the purpose of the administration, and (v) that there are no other discretionary factors why an order should not be made.

Addressing each of these requirements in turn the Judge held:

- (i) The Director and family members were in possession or control of the Land.
- (ii) The Company was entitled to possession of the Property as it held the freehold title to it and neither the Director nor his family members had any interest which would take priority over the Company’s title. The reasoning of the Judge was set out at [32]-[33] of the judgment,
- (iii) Section 234 of IA 1986 was applicable as section 436 of IA 1986 defines "property" as including land.
- (iv) The purpose of the administration would be served by the Administrators taking possession and realising the Property as this was the Company’s only asset of substance.
- (v) There were no specific factors that would make it inappropriate to make an order for possession.

Therefore, the Judge ordered that the Director and family members should deliver possession of the Property to the Administrators.

COURT OF APPEAL

The Director was given permission to appeal on three grounds which are summarised below as:

- (i) The Property was not property to which the Company was entitled to for the purposes of Section 234(2) of IA 1978;
- (ii) The Judge was wrong to hold that CPR 55 did not apply, such that the Order should not have been granted, and;
- (iii) That it was an abuse of process for the Administrators to seek possession by the Application when possession proceedings were ongoing.

Ground 1

In relation to the first ground, the Court of Appeal found that the Property was not property to which the Company was entitled to for the purposes of Section 234(2) of IA 1986. Whilst the Court found that the definition of property in the act was wide enough to include land and interest of land, it determined that the Company had no entitlement to the Property for two reasons.

First, following the Receivers being appointed by TFG2, pursuant to section 101 of LPA 1925, the Receivers had the power to take possession of, and to sell, the Property for the benefit of TFG2. The Company had no right to interfere with or revoke the appointment of the Receivers. Pursuant to Section 143 and 144 of IA 1986, the Administrators were conferred with the right to secure, take into custody or control the assets and property that the company is entitled to. However, this did not include the right to interfere with or revoke the appointment of the Receivers (*Gosling v Gaskell* [1896] 1 QB 669 at 699 applied), and so it did not confer a right on the Administrators to seek possession of the Property.

Second, whilst the Company as mortgagor had the right to take possession proceedings against third parties, this ceased once TFG2 gave notice of its intention to take possession, pursuant to Section 98(1) of LPA 1925. As such, when TFG2 commenced possession proceedings against the Director, the Company lost the right to take possession proceedings against third parties. As such, the Administrators were not entitled to seek possession of the Property from the Director in the name of the Company, as the Administrators could stand in no better position than the Company. Therefore, the Court of Appeal concluded that the Property was not property to which the Company was entitled to for the purposes of Section 234(2) of IA 1986.

As the Court of Appeal allowed the appeal on ground 1 it did not reach any concluded view on ground 2 and 3 but gave the following obiter views.

Ground 2

In relation to the second ground, the Court of Appeal consider its merits on the basis that contrary to the decision on ground 1, section 234 of IA 1978 could be used by the Administrators to seek possession the Property. On that basis, the Court of Appeal gave the view that, the effect of the Insolvency Rule 12.1(1) was that the CPR 55 would apply to the proceedings for possession brought under Section 234 of IA 1978, with the necessary modifications, except so far as the relevant provisions of the CPR are disapplied or are inconsistent with the Insolvency Rules.

The Court of Appeal considered whether the failure for proceedings to be issued pursuant to CPR 55 or to follow procedural steps relevant to CPR 55 would invalidate the proceedings. The procedure steps of CPR 55 said not to have been followed were, the failure of the Judge to direct pleadings by way of statements of case or for proceedings to be heard in the County Court hearing centre serving Orpington where the Land is situated. The Court of Appeal indicated it would have considered these failures not to have invalidated the Order, as they did not prejudice the Director sufficiently.

Ground 3

In relation to the third ground, the Court of Appeal indicated that the Administrators seeking to use section 234 of IA 1978 to seek possession, after possession proceedings had already been brought by TFG2 would be regarded as an abuse of process. This was due to TFG2 being the only person who would have benefitted economically from possession being granted against the Director. As such, TFG2 were effectively seen as bringing duplicate proceedings against the Director for possession, which the Court indicated was an abuse of process.

LESSONS LEARNED

The case highlights important principles relevant to both mortgage possession and insolvency proceedings.

It is a timely reminder of the effects of a receiver being appointed by a mortgagee over a mortgaged property. Once the receiver has notified the mortgagor of the intention to take possession of the property, the mortgagor loses the right to bring claims against third parties, and as such, the mortgagor is unable to bring proceedings against trespassers.

Further, it is a reminder of the powers of an administrator over an insolvent company's assets. An administrator's rights cannot extend beyond those that the company would have had prior to the appointment of the administrator. As such, in deciding whether the administrator can take any action, it must first consider whether the company would have been able to take the same action if solvent.

In the present case, due to the Company losing the right to bring proceedings for possession of the Property against third parties when the Receivers were appointed, the Administrators could not then seek to use their powers to recover possession of the Property from a third party in their own name or that of the Company.

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