Neutral Citation Number: [2017] EWHC 605 (Ch)

Case No: CH-2016-000182

IN THE HIGH COURT OF JUSTICE

**CHANCERY DIVISION**

**IN BANKRUPTCY**

**ON APPEAL FROM THE COUNTY COURT AT KINGSTON UPON THAMES**

**IN THE MATTER OF SARAH OMER HASSAN AMIN**

**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 20 April 2017

**Before** :

Mr John Male QC

(sitting as a Deputy Judge)

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**Between :**

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|  | **DR MOHAMMED ELTOM ABDULLA** | Appellant |
|  | **- and -** |  |
|  | **(1) MR ANDREW JOHN WHELAN**  **(As Trustee in Bankruptcy of Sarah Omer Hassan Amin)**  **(2) MR WALTER TERENCE WEIR**  **(3) MR DAVID ANSELL**  **(4) MRS SARAH OMER HASSAN AMIN** | Respondents |

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Ms Bridget Williamson (instructed by Brecher LLP) for the Appellant

Mr Samuel Laughton (instructed by Coleman & Betts) for the First Respondent

Mr Joseph Ollech (instructed by Carter Bells LLP) for the Second and Third Respondents

Hearing date: 7th March 2017

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Judgment Approved by the court for handing down  
(subject to editorial corrections)

**Mr John Male QC (sitting as a Deputy Judge):**

**Introduction**

1. This is an appeal by Dr Mohammed Eltom Abdulla (“Dr Abdulla”) against the decision of District Judge Gold made on 7 July 2016 in the County Court at Kingston Upon Thames. The appeal concerns the operation of the disclaimer provisions in sections 315 to 321 of the Insolvency Act 1986 (“the Act”) in the case of jointly owned leasehold property.
2. Dr Abdulla is the husband of the Fourth Respondent, Mrs Sarah Omer Hassan Amin (“the Bankrupt”). Dr Abdulla claims to be a creditor of the Bankrupt, although his proof has not yet been accepted (or rejected) by the First Respondent, Mr Whelan, who is the trustee in bankruptcy (“the Trustee”). The bankruptcy order was made on 8 June 2010. The Trustee was appointed with effect from 2 February 2011.
3. At the time of the bankruptcy order the Bankrupt was a joint tenant with a Mr Elhilali of business premises in Kingston Upon Thames (“the Property”). She and Mr Elhilali (together “the Tenants”) held the Property under the terms of an underlease dated 26 September 2003 (“the Underlease”) for a term expiring on 31 July 2018. The Underlease was contracted out of the protection of Part II of the Landlord and Tenant Act 1954. The Second and Third Respondents, Mr Walter Terence Weir and Mr David Ansell (“the Landlords”), are the current landlords under the Underlease.
4. On 24 June 2011 the Trustee served a notice of disclaimer pursuant to section 315 of the Act. By that notice the Trustee disclaimed “all my/our interest in Leasehold property under the terms of [the Underlease] in respect of [the Property]”. There was an earlier notice of disclaimer served by the Official Receiver on 12 July 2010. I am not concerned with that notice.
5. The parties do not agree upon the effect of the notice of disclaimer. The Trustee, on advice from Counsel and supported by the Landlords, takes the view that the notice of disclaimer does not end the legal estate in the Underlease and that the estate of the Bankrupt remains liable for the payment of rent until the expiry of the term. Dr Abdulla contends that the notice of disclaimer was effective to disclaim all of the Bankrupt’s interest in the Underlease and that the estate of the Bankrupt is liable for no further rent after the disclaimer.
6. That issue was debated at some length in correspondence between the parties’ Solicitors but they were unable to agree on the effect of the disclaimer. The Trustee therefore sought the directions of the Court in relation to a range of issues. The only live issue for the purposes of this appeal is whether the notice of disclaimer had the effect of preventing the Landlords from proving for rents falling due after the date on which it was served.
7. On 7 June 2016 District Judge Gold heard argument on this issue. On 7 July 2016 the District Judge handed down a written judgment. In that judgment he accepted the arguments advanced by the Trustee and the Landlords. On the same day the District Judge ordered and directed:

“**that neither of the purported disclaimers dated 12 July 2010 and 24 July 2011 of the [Underlease] had the effect of preventing [the Landlords] from proving for rents falling due after either of the dates on which such disclaimers were served.”**

1. Dr Abdulla applied for permission to appeal. On 25 October 2016 Hildyard J granted permission to appeal. The appeal was heard on 7 March 2017. Ms Bridget Williamson represented Dr Abdulla. Mr Samuel Laughton represented the Trustee. Mr Joseph Ollech represented the Landlords. I am grateful to all three Counsel for their helpful written and oral arguments.

**The statutory provisions**

1. Section 315(1) of the Act provides that a trustee in bankruptcy may disclaim any “onerous property”. The expression “onerous property” is defined in section 315(2) as:

**“(a) any unprofitable contract, and**

**(b) any other property comprised in the bankrupt’s estate which is unsaleable or not readily saleable, or is such that it may give rise to a liability to pay money or perform any other onerous act.”**

1. Section 315(3) provides that a disclaimer:

“(**a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the bankrupt and his estate in or in respect of the property disclaimed, and**

**(b) discharges the trustee from all personal liability in respect of that property as from the commencement of his trusteeship,**

**but does not, except so far as necessary for the purpose of releasing the bankrupt, the bankrupt’s estate and the trustee from any liability, affect the rights or liabilities of any other person.”**

1. Section 283 of the Act defines what is comprised in a bankrupt’s estate. Section 283(1) provides as follows:

**“(1) Subject as follows, a bankrupt’s estate for the purposes of any of this Group of Parts comprises-**

**(a) all property belonging to or vested in the bankrupt at the commencement of the bankruptcy, and**

**(b) any property which by virtue of any of the following provisions of this Part is comprised in that estate or is treated as falling within the preceding paragraph.”**

1. “Property” is defined in section 436(1) of the Act as including:

**“money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, where present or future or vested or contingent, arising out of, or incidental to, property.”**

1. Section 283(3) sets out two exceptions to section 283(1). So far as material, it provides as follows:

**“(3) Subsection (1) does not apply to –**

* + - * 1. **property held on trust for any other person…”**

1. I will examine these provisions later when I discuss the issues.

**The rival arguments**

1. On behalf of Dr Abdulla, Ms Williamson argues that, by virtue of the disclaimer, the legal estate in the Underlease has come to an end such that no rent is payable by the Bankrupt’s estate after the disclaimer. Ms Williamson raised two main points in her skeleton argument and in her opening oral argument.
2. Ms Williamson’s first main point is based on the approach taken by the House of Lords in Hindcastle Limited v. Barbara Attenborough Associates Limited [1997] AC 70. That case concerned the effect of the disclaimer of a lease held by an assignee on the liability of an original tenant or a surety.
3. In particular, Ms Williamson relied upon what Lord Nicholls said about the purpose of the equivalent provisions in the case of disclaimer by a liquidator of a company that is being wound up. Lord Nicholls said this at pp.86H/87C:

**“The fundamental purpose of these provisions is not in doubt. It is to facilitate the winding up of the insolvent’s affairs. There is a further purpose in personal insolvency cases. A bankrupt’s property vests automatically in his trustee. The disclaimer provisions operate to discharge the trustee in bankruptcy from all personal liability in respect of the property: see section 315(3)(b).**

**Equally clear is the essential scheme by which the statute seeks to achieve these purposes. Unprofitable contracts can be ended, and property burdened with onerous obligations disowned. The company is to be freed from all liabilities in respect of the property. Conversely, and hardly surprisingly, the company is no longer to have any rights in respect of the property. The company could not fairly keep the property and yet be freed from its liabilities.**

**Disclaimer will, inevitably, have an adverse impact on others: those with whom the contracts were made, and those who had rights and liabilities in respect of the property. The rights and obligations of these other persons are to be affected as little as possible. They are to be affected only to the extent necessary to achieve the primary object: the release of the company from all liability. Those who are prejudiced by the loss of their rights are entitled to prove in the winding up of the company as though they were creditors.”**

1. Ms Williamson submitted that the Trustee being able to disclaim the Bankrupt’s legal interest in the Underlease was entirely consistent with these principles and, in particular, with what Lord Nicholls said was the “fundamental purpose” of the disclaimer provisions.
2. Ms Williamson also relied upon what Lord Nicholls said when he was considering the position upon disclaimer as between an insolvent tenant, a guarantor and a landlord. Lord Nicholls said this at p.88C:

**“…there is a recondite point which must be faced and resolved here as part of the process of interpreting the sections as a whole. It concerns what happens to the lease in this tripartite situation. The point may be stated shortly. A lease either exists, or it does not. If disclaimer has the effect of ending the lease, no further rent can become due, and so the guarantor and original tenant cannot be called upon. It is a contradiction in terms for rent to accrue for a period after the lease has ended. If, however, disclaimer does not end the lease, so that rent continues to accrue, what happens to the lease, bearing in mind that the insolvent’s interest in the property has been ended? Possibilities are that the lease vested in the Crown as bona vacantia, or that it remains in being but without an owner, or that it remains vested in the tenant but in an emasculated form. Each of these possibilities raises its own problems.**

**The starting point for attempting to solve this puzzling conundrum is to note that the Act clearly envisages that a person may be liable to perform the tenant’s covenants even after the lease has been disclaimed. A vesting order may be made in favour of such a person: see section 182(3), and see also section 181(2)(b). The proper legal analysis has to be able to accommodate this conclusion. The search, therefore, is for an interpretation of the legislation which will enable this to be achieved as well as fulfilling the primary purpose of freeing the insolvent from all liability while, overall, doing the minimum violence to accepted property law principles.**

**If the problem is approached in this way, the best answer seems to be that the statute takes effect as a deeming provision so far as other persons’ preserved rights and obligations are concerned. A deeming provision is a commonplace statutory technique. The statute provides that a disclaimer operates to determine the interest of the tenant in the disclaimed property but, not so as to affect the rights or liabilities of any other person. Thus when the lease is disclaimed it is determined and the reversion accelerated but the rights and liabilities of others, such as guarantors and original tenants, are to remain as *though* the lease had continued and not been determined. In this way the determination of the lease is not permitted to affect the rights or liabilities of other persons. Statute has so provided.”**

1. Ms Williamson submitted that, so as to fulfil what Lord Nicholls called the primary purpose of freeing the insolvent from all liability while doing the minimum violence to accepted property law principles, the Court should hold that the Trustee was able to disclaim the Bankrupt’s legal interest in the Underlease. There was a conundrum to be solved here in that it was necessary to reconcile the fundamental purpose of the disclaimer provisions with what Ms Williamson described as the strict property law principles relied upon by the Trustee and the Landlords.
2. Finally, Ms Williamson relied upon what Lord Nicholls said at p.89D when he summarised the result of his decision as follows:

**“The result is not without artificiality. Unless a vesting order is made, after disclaimer there will be no subsisting lease, and the property will be vacant and empty. But if the landlord enters upon his own property, he will thereby end all future claims against the original tenant and any guarantor, not just claims in respect of the shortfall between the lease rent and the current rental value of the property. It must be recognised, however, that awkwardness is inherent in the statutory operation: extinguishing (“determining”) the lease so far as the bankrupt is concerned, but leaving others’ rights and liabilities in respect of the same lease affected no more than necessary to achieve the primary purpose.”**

1. So, said Ms Williamson, while the result here might be artificial, it had to be acknowledged that awkwardness was inherent in the statutory operation. Strict property law principles had to give way to the statutory scheme.
2. The second main point which Ms Williamson relied upon was the decision of the Court of Appeal in Lee v. Lee (A Bankrupt) [2000] BCC 500. She said that it was clear from the judgment in that case that what was being dealt with there was a disclaimer of the lease and not merely a disclaimer of an equitable interest in the lease. In that case, said Ms Williamson, Mr Lee held the lease on trust for himself and Mrs Lee but, despite that, the lease in that case had been disclaimed. The Registrar, Ferris J and the Court of Appeal in Lee v. Lee all proceeded on the basis that Mr Lee’s trustee had validly disclaimed the lease itself. This supported the conclusion that the Bankrupt’s legal estate in the Underlease could be disclaimed.
3. In her reply Ms Williamson raised two further points regarding, first, the wording of section 283(3)(a) with its reference to “property held on trust for any other person” (emphasis added); and, secondly, the wording of section 315(1)(a) with its reference to an “unprofitable contract”.
4. On behalf of the Trustee, Mr Laughton first relied upon three matters which he understood to be common ground. They were: (1) that the Tenants held the Underlease as joint legal owners on trust for themselves; (2) that the legal estate in the Underlease had remained at all times in the names of the Bankrupt and Mr Elhilali as trustees (subject to the question of disclaimer); and (3) that what had vested in the Trustee was the Bankrupt’s beneficial interest in the Underlease as one of two tenants in common.
5. Therefore, Mr Laughton argued, the notice of disclaimer was of no effect in relation to the legal estate in the Underlease since that legal estate did not comprise part of the Bankrupt’s estate and therefore did not pass to the Trustee. The only interest which the Trustee had in the Property was as one of two beneficial joint tenants in common.
6. This conclusion, said Mr Laughton, was unsurprising given that a trustee in bankruptcy can hardly disclaim something which is not in his ownership. Furthermore, any step taken in relation to trust property such as the Underlease could only be taken by the two trustees acting together, i.e. by the Bankrupt and Mr Elhilali, and that had not happened. Nor, said Mr Laughton, could a joint tenancy at law be severed.
7. Mr Laughton submitted that what Lord Nicholls said in Hindcastle was not relevant to the determination of this appeal. The House of Lords was there concerned with a situation where there was a lack of clarity in the interaction between property law and insolvency law. In the present case there was no such lack of clarity. It was clear from the provisions of the Act that the legal estate in the Underlease did not vest in the Trustee. As it did not vest, it could not be disclaimed.
8. As to Lee v. Lee, it could be distinguished on the facts and, in any event, the point now in issue on this appeal had not been taken or argued in that case. Instead, the parties and the Court had simply proceeded on an assumed basis. Nothing that Ferris J or the Court of Appeal said bound this Court to allow this appeal.
9. On behalf of the Landlords, Mr Ollech adopted and supported the arguments advanced by the Trustee. He also made some helpful supplementary points placing emphasis on matters from a real property and landlord and tenant perspective. So, he relied upon the basic principle of real property law that where a legal estate in land is co-owned, then the co-owners hold the property on trust for themselves, whether as joint tenants or as tenants in common. He also relied upon the fact that the obligation to pay rent is a contractual, legal obligation which flows from the legal interest in a lease and not from the beneficial interest. Also, when a lease vests in trustees who hold the lease on trust for beneficiaries, it is the trustees who are liable to pay the rent. While the trustees may have an indemnity from the beneficiaries, that is a separate matter. The landlord’s relationship is with the tenant.
10. Dr Abdulla’s approach, said Mr Ollech, failed to distinguish properly between the rights and liabilities that flow from the legal estate as opposed to the beneficial interest. Furthermore, said Mr Ollech, it was not clear whether Dr Abdulla’s argument went so far as to say that the disclaimer (if effective) also operated to determine the Underlease vis-à-vis the co-owner, Mr Elhilali. If that was the argument then, said Mr Ollech, it illustrated the flaw in the analysis. The Bankrupt and her co-owner were one joint legal entity and, as trustees, they could not be divided by the provisions of the Act. If Dr Abdulla accepted that the Underlease continued against Mr Elhilali, then it must continue against the Bankrupt as well.

**Discussion**

1. For the reasons set out below, I prefer the submissions on behalf of the Trustee and the Landlords.
2. The starting point is that the Tenants held the Underlease as joint legal owners on trust for themselves. The legal estate in the Underlease was vested in the Bankrupt and Mr Elhilali as trustees for themselves.
3. Section 283(1) of the 1986 Act defines what property is within a bankrupt’s estate. Section 283(3) sets out two exceptions, one of which is: “(a) property held on trust for any other person”. In my judgment, the effect of that exception is that the legal estate in the Underlease was excepted from the property comprised within the Bankrupt’s estate. It therefore remained at all times in the names of the Bankrupt and Mr Elhilali.
4. It is convenient at this stage, to deal with one of the points raised by Ms Williamson in her reply. Ms Williamson relied upon the words in section 283(3)(a) “property held on trust for any other person.” (Emphasis added reflecting Counsel’s argument). As I understand the argument, it was submitted that the exception in section 283(3)(a) did not apply because the Underlease was held by the Bankrupt on trust for herself and she was not “any other person”.
5. I reject this argument. It seems to me that, as Mr Laughton submitted, it is inconsistent with the decision of Goff J in Re McCarthy (a bankrupt) [1975] 1 WLR 807; [1975] 2 All ER 857. In that case Goff J had to consider a dictum of Jessel MR in Morgan v. Swansea Urban Sanitary Authority (1878) 9 Ch. D 582 at 585 and the decision in St Thomas’s Hospital (Governors) v. Richardson [1910] 1 KB 271 at 277.
6. The dictum was “…under the Bankruptcy Act, where a trustee has no beneficial interest, the legal estate does not pass; but where he has it does pass…”. The decision was that, where a bankrupt was the sole owner of the legal estate on trust for a beneficiary absolutely entitled, but the estate being leasehold, was required to be retained to secure the bankrupt’s right of indemnity in priority to all claims of his beneficiary, the leasehold vested in the trustee in bankruptcy.
7. This dictum and this decision might appear to support the approach taken by Ms Williamson. However, in Re McCarthy Goff J said this about them:

**“In my judgment, neither dictum nor decision can be applied to a case since the Law of Property Act 1925 where a bankrupt and another hold property on trust for sale, albeit the bankrupt has a beneficial interest in the proceeds because the legal estate cannot be severed at law and the bankruptcy cannot divest the estate of the co-trustee.”**

1. It follows, in my judgment, that the words “held on trust for any other person” do not assist Dr Abdulla. I agree with the Trustee and the Landlords that the legal estate in the Underlease did not vest in the Trustee.
2. I turn from the provisions of the Act dealing with the property comprised in a bankrupt’s estate to the provisions of the Act dealing with disclaimer. In my judgment, under section 315 the Trustee can only disclaim that which is comprised in the Bankrupt’s estate. As just set out, the legal estate in the Underlease was not vested in the Bankrupt’s estate. Therefore it could not be disclaimed. As Mr Laughton argued, and I agree, a trustee in bankruptcy cannot disclaim something which is not in his ownership. Further, and in any event, it seems to me that any step taken in relation to trust property, such as a disclaimer in relation to the legal estate in the Underlease, would need to be taken by the two trustees acting together, i.e. by the Bankrupt and Mr Elhilali. Nor, of course, can a joint tenancy at law be severed: see, again, McCarthy as cited above.
3. It is convenient at this stage to deal with a second point raised by Ms Williamson in her reply. Ms Williamson argued that Trustee could disclaim the Underlease because it was an “unprofitable contract” within section 315(1)(a) of the Act. It seems to me that the difficulty with this argument is that identified by Mr Laughton, namely that a trustee can only disclaim contracts or property which form part of a bankrupt’s estate. That being so, as the legal estate in the Underlease was not vested in the Trustee, contrary to Ms Williamson’s argument, the Trustee could not rely upon section 315(1)(a).
4. I turn now to the first of Ms Williamson’s two main arguments which is based on what Lord Nicholls said in Hindcastle. In effect, she suggested that the Court should take a more flexible approach to the effect of the disclaimer and not be bound by the strict property law approach relied upon by the Trustee and the Landlords.
5. In my judgment, Dr Abdulla cannot rely upon Hindcastle in the way in which Ms Williamson seeks to do. As Mr Laughton pointed out, and I agree, the difference between this case and Hindcastle is that in Hindcastle there was what Lord Nicholls called a “puzzling conundrum”. There was a lack of clarity in the interaction of property law and insolvency law. In this case, it seems to me that the insolvency legislation is clear in that the legal estate in the Underlease is excluded from the Bankrupt’s estate. That being so, there is, as Mr Laughton said, no necessity to find a solution to any conundrum because Parliament has made clear that property held on trust (such as the Bankrupt’s legal estate in the Underlease) is to be excluded from a bankrupt’s estate. If the legal estate in the Underlease is excluded from the bankrupt’s estate then, both as a matter of logic and as a matter of the language used in section 315, I cannot see how it can possibly be disclaimed.
6. In short, as Mr Laughton said, and I agree, it is neither necessary, nor possible, for the legal estate to be disclaimed.
7. Stepping back, and looking at Mr Ollech’s arguments, it seems to me that this conclusion is supported by the fact that the obligation to pay rent is a contractual, legal obligation which flows from the legal interest in the Underlease and not from the beneficial interest. The Landlords’ relationship is with the Tenants. Also, it seems to me that there is force in Mr Ollech’s point that if, as seems to me is the case, the Underlease continues against Mr Elhilali, then it must also continue against the Bankrupt as well. The Bankrupt and her co-owner are one joint legal entity. Also, as trustees, they cannot be divided by the provisions of the Act.
8. I therefore reject Ms Williamson’s first main argument.
9. Ms Williamson’s second main argument was based upon Lee v. Lee. She pointed out that in that case Mrs Lee was asserting an equitable interest in the leasehold property in which Mr Lee, the bankrupt, held the legal title. But Mr Lee’s trustee in bankruptcy had disclaimed the lease. So, Ms Williamson argued, the case necessarily proceeded before the Registrar, Ferris J and the Court of Appeal on the basis that there could be a disclaimer of the legal estate in a leasehold property because the property was held by Mr Lee on trust for himself and Mrs Lee, yet it was disclaimed.
10. It seems to me that Lee v. Lee provides no real support for Dr Abdulla’s case. As I read the judgments in Lee v. Lee the point now in issue was not taken and was not argued. Rather, as it was colloquially put in argument, the point went through on the nod.
11. Staying with Lee v. Lee and looking at that decision in a little more detail, the material facts were as follows. Mr Lee purchased the leasehold property in his sole name in 1983. This was before he had even met his future wife. She moved into the property in 1988. At about that time they got married. The bankruptcy order was made in 1995. The trustee in bankruptcy disclaimed the lease on 15 August 1996.
12. In his judgment Ferris J ([1998] Lexis Citation 2709, p.2) said:

**“…Mr and Mrs Lee separated in April 1996. Mr Lee continued to live at the property. Mrs Lee moved elsewhere. Mrs Lee has subsequently claimed to be entitled to a half share in the property…”** (Emphasis added).

1. It is therefore far from clear whether, at the date of the disclaimer, Mrs Lee had ever intimated a claim that she was entitled to a beneficial interest in the property. It is therefore perhaps not surprising that the trustee in bankruptcy disclaimed the lease. It is also perhaps not surprising that there was apparently no suggestion in the argument before Ferris J that the lease could not be disclaimed. For my part, I do not read Ferris J as deciding the point now in issue on this appeal. It seems to me that the point was simply assumed.
2. It seems to me that the same applies to the decision of the Court of Appeal. It appears from the report of that decision that Mrs Lee did not attempt to argue that the possible existence of a trust had any effect on the vesting of the property in the trustee in bankruptcy, or on the disclaimer, or on the effect of any such disclaimer. There was no need for her to do so because of the attitude which she took to the litigation. So, Mrs Lee stated (see p.504):

**“I do not wish to prevent [any person] from obtaining a vesting order. I merely want to preserve the rights which I have in respect of the premises”.**

1. It appears from this statement that Mrs Lee’s concern was with the proceeds of sale and not with the different interests in the property. In these circumstances, with all due respect, it seems to me to be understandable why both Ferris J and the Court of Appeal assumed the correctness of the point which is now at issue in this appeal. I consider that there is nothing in Lee v. Lee which requires this Court to allow this appeal.
2. For these reasons, I reject Ms Williamson’s second main argument.
3. It is convenient at this stage to note how the point at issue in this appeal is dealt with in the textbooks. My attention was drawn to what was said in two textbooks.
4. First, in Emmet & Farrand on Title, Vol. 1, at para. 11.338 it is said that:

**“Apart from contracts, which are dealt with specifically by s.315(2)(a) of the 1986 Act, a trustee in bankruptcy can only disclaim property which is “comprised in the bankrupt’s estate”: s.315(2)(b). The scope of property falling within this description is determined by s.283 of the Act, considered above. The effect of importing the s.283 definition is that the trustee in bankruptcy can not disclaim, for example, property held on trust by the bankrupt even if the bankrupt is one of the beneficiaries (the beneficial interest itself should in principle be disclaimable)….”** (Emphasis added).

1. This passage provides support for the approach taken by the Trustees in this case. As to the words in brackets in this passage, it has not been suggested in argument that the mere disclaimer of any beneficial interest in the Underlease would end the Bankrupt’s obligation to pay the rent.
2. Secondly, in Personal Insolvency Law and Practice, 4th Ed, Schaw Miller and Bailey, at para.14.105 it is said that:

**“Where a bankrupt takes property on trust for himself and for other persons, his own beneficial interest falls within his estate”.**

1. It is not suggested in this passage that the legal estate in the property taken on trust falls within a bankrupt’s estate. Again, this provides support for the approach taken by the Trustee.
2. Some further points were taken on behalf of Dr Abdulla in Ms Williamson’s skeleton argument.
3. First, it was said that, if the disclaimer does not apply, the consequence is that the Landlords retain their right to prove not only for the rent accruing for the remainder of the term of the Underlease, but also for other amounts falling due under the Underlease, such as service charge, insurance premiums and damages for any breaches of repairing covenants. So, it was argued, this exposed the Bankrupt’s estate to a much greater potential liability than if disclaimer was available.
4. The Trustee’s response to this argument was that this was not a reason for me to reach a different conclusion. It was simply a function of the way in which the scheme of the insolvency legislation worked and of the exclusion of property held on trust from a bankrupt’s estate. The Landlords’ response to this argument was that it was a variant of an “It’s not fair” argument by Dr Abdulla which ignored the statutory provisions. I agree with both responses. It seems to me that this consequence is a function of the scheme of the insolvency legislation.
5. Secondly, it was said that, if disclaimer was not available, the implications for the bankruptcy estates of debtors who are joint lessees are serious. The disclaimer required under the Act would not apply and the statutory purpose would be subverted. Again, it seems to me that this is a consequence of the scheme of the legislation and the exclusion from a bankrupt’s estate of property held on trust.
6. Thirdly, reliance was placed upon the wording of section 317 as indicating that the power to disclaim was not linked to the strict legal title. Section 317(1) refers to:

**“(1) The disclaimer of any property of a leasehold nature…”** (Emphasis added).

1. It was submitted that the emphasised words showed that the power to disclaim extended beyond the narrow ambit conferred by the decision of the District Judge and supported a purposive approach to the construction of the disclaimer provisions in the Act. For the reasons set out earlier when rejecting Ms Williamson’s first main argument, I reject this submission.

**Conclusions**

1. For the reasons given above, I conclude as follows. The legal interest in the Underlease remained, and remains, in the names of the Bankrupt and Mr Elhilali. It has not been disclaimed. Rent continues to be payable to the Landlords. It follows that the District Judge was correct and that the appeal should be dismissed.
2. I invite Counsel to agree a draft order to give effect to my conclusions.