[2023] UKSC 29
On appeal from: [2020] EWCA Civ 1491

JUDGMENT

Brake and another (Respondents) *v* The Chedington Court Estate Ltd (Appellant)

before

Lord Briggs
Lord Hamblen
Lord Leggatt
Lady Rose
Lord Richards

JUDGMENT GIVEN ON
10 August 2023

Heard on 1 November 2022

Appellant
Andrew Sutcliffe KC
William Day
Gretel Scott
(Instructed by Stewarts Law LLP)

Respondents
Joseph Curl KC
Jon Colclough
(Instructed by RSW Law)

LORD RICHARDS (with whom Lord Briggs, Lord Hamblen, Lord Leggatt and Lady Rose agree):

Introduction

1. This appeal concerns the standing of a bankrupt to challenge the acts, omissions or decisions of the trustee of the bankrupt's estate under section 303(1) of the Insolvency Act 1986. More particularly, it concerns the standing of two bankrupts to challenge steps taken by their trustee to facilitate their eviction from a property which was in their possession (but was not occupied by them).

2. The facts are not straightforward, and it is convenient to consider first the relevant legislation and the authorities which have considered its interpretation and application.

The legislation

3. Section 303(1) of the Insolvency Act 1986 ("IA 1986") provides:

> "If a bankrupt or any of his creditors or any other person is dissatisfied by any act, omission or decision of a trustee of the bankrupt's estate, he may apply to the court; and on such an application the court may confirm, reverse or modify any act or decision of the trustee, may give him directions or may make such other order as it thinks fit."

4. The power of the court to intervene in the conduct of a bankruptcy on the application of the bankrupt, now contained in section 303(1), has its origins in the inherent jurisdiction of the court as it existed prior to the enactment of the mid-19th century Bankruptcy Acts. A provision to much the same effect as section 303(1) was included in the Bankruptcy Act 1869 (32 & 33 Vict, c 71) and repeated in the Bankruptcy Act 1883 (46 & 47 Vict, c 52) and in the Bankruptcy Act 1914. Section 303 of the IA 1986 replaced section 80 of the 1914 Act.

5. Similar provisions entitling creditors and others to challenge liquidators in a compulsory winding-up have applied since the enactment of section 24 of the Companies (Winding-Up) Act 1890 (53 & 54 Vict, c 63). The current provision is section 168(5) of the IA 1986 which provides:

> "If any person is aggrieved by an act or decision of the liquidator, that person may apply to the court; and the court may confirm, reverse or modify the act or decision complained of, and make such order in the case as it thinks just."

6. The differences in the language of sections 168(5) and 303(1) make no difference to the scope of the two provisions. While the reference in section 303(1) to the bankrupt is appropriate only to personal insolvency, the general term "any person … aggrieved" in section 168(5) will encompass creditors and, where appropriate, members of the company in liquidation as well as any other person who can qualify as a "person aggrieved". There is no difference of substance between an "aggrieved" and a "dissatisfied" person. "Aggrieved" was the word used in the Bankruptcy Acts and was updated to "dissatisfied" in the extensive re-drafting of the personal insolvency provisions first enacted in the Insolvency Act 1985 and brought into force as part of the IA 1986. A similar process was not undertaken as regards many of the provisions governing corporate insolvency previously contained in successive Companies Acts, including what is now section 168.

7. Both section 303(1) and section 168(5) of the IA 1986 express in very broad terms the persons who may apply to challenge a trustee or liquidator, as did their predecessor sections. The express terms are not, however, to be given a literal reading. On both principle and authority, there are limitations on the persons who have standing to apply under these provisions.

The authorities

8. Neither section is intended to provide a means of redress to a party with no connection to the bankruptcy or liquidation. I agree with the observation of Peter Gibson LJ in *Mahomed v Morris* [2000] EWCA Civ 46, [2000] 2 BCLC 536 at para 26: "It could not have been the intention of Parliament that any outsider to the liquidation, dissatisfied with some act or decision of the liquidator, could attack that act or decision by the special procedure of section168(5)".

9. Limitations apply also to bankrupts, creditors and others who are connected with the bankruptcy or liquidation. In accordance with the principles that serve to confine standing under these sections, the authorities have established the following propositions. First, subject to very limited exceptions discussed below, a bankrupt must show that there is or is likely to be a surplus of assets once all liabilities to creditors, and the costs and expenses of the bankruptcy, have been paid. The same is

true of a contributory of a company holding fully paid shares, although there has been no decided authority on this point. Second, a creditor will not have standing, except as regards a matter which affects the creditor in its capacity as such. As a matter of principle, this limitation applies also to bankrupts, even when they can demonstrate a surplus. Third, there are other, very limited, circumstances which will provide standing to an applicant, whether or not the applicant is the bankrupt, a creditor or a contributory. So far as the authorities go, those circumstances are confined to cases where the challenge concerns a matter which could only arise in a bankruptcy or liquidation and in which the applicant has a direct and legitimate interest.

10. The general requirement that a bankrupt must show there is or is likely to be a surplus necessarily follows from the structure and purposes of bankruptcy and from the functions and duties of a trustee in bankruptcy. On the making of a bankruptcy order, all property belonging to the bankrupt, with a few exceptions, vests in the official receiver or other trustee of the bankrupt's estate. The property is held by the trustee on a statutory trust to be administered in accordance with the provisions of the IA 1986 and the applicable Insolvency Rules. Section 305(2) sets out the function of the trustee as being "to get in, realise and distribute the bankrupt's estate in accordance with the following provisions of this Chapter [Chapter IV of Part IX]; and in the carrying out of that function and in the management of the bankrupt's estate the trustee is entitled, subject to those provisions, to use his own discretion".

11. The bankrupt ceases to have any beneficial interest in his former property, now constituting "the bankrupt's estate". Under the IA 1986, as under its statutory predecessors, "the principle that the bankrupt is divested of an interest in his property and liability for his debts remains fundamental": *Heath v Tang* [1993] 1 WLR 1421, 1427, per Hoffmann LJ. The bankrupt has only a contingent statutory right to participate in any eventual surplus after payment in full and with interest of all creditors in the bankruptcy and the payment of the costs and expenses of the bankruptcy, including the trustee's remuneration: *James v Rutherford-Hodge* [2005] EWCA Civ 1580 at para 12 per Chadwick LJ. Unless, therefore, there is or is likely to be a surplus, the bankrupt has no legitimate interest in the administration of the estate. It follows that he lacks standing under section 303(1) to challenge the administration by the trustee of the estate. Parliament cannot have intended the bankrupt to be able to interfere in the administration of an estate in which he has no interest. For a robust exposition of the principle, see the judgment of Harman J in *In re A Debtor, Ex p The Debtor v Dodwell (The Trustee)* [1949] Ch 236, 240-241.

12. Accordingly, for example, a bankrupt cannot require a trustee to commence or continue proceedings in respect of any claim that forms part of the bankrupt's estate, nor can a bankrupt require the trustee to lend his name to proceedings to be

prosecuted by the bankrupt, unless there is or is likely to be a surplus in the estate: *Benfield v Solomons* (1803) 9 Ves 77, 83-84 (Lord Eldon LC), cited by Hoffmann LJ in *Heath v Tang* [1993] 1 WLR 1421, 1424. Similarly, the bankrupt cannot require the trustee to defend claims to property forming part of the bankrupt's estate or claims for sums payable only out of the bankrupt's estate: *Heath v Tang* (supra) at p 1424-1425.

13. The processes of bankruptcy and insolvent liquidation are primarily for the benefit of creditors. They necessarily have an interest in the proper administration by the trustee or liquidator of that process. Equally, though, their standing to challenge the trustee or liquidator is limited to matters which affect their interests as creditors under the statutory trust, and not in some other capacity.

14. This principle is illustrated by two decisions of the Court of Appeal.

15. In *In re Edennote Ltd* [1996] 2 BCLC 389, three creditors applied to set aside a sale of an asset by the liquidator on the grounds that the sale was at an undervalue. The applicants said that, if offered the opportunity, they would have been willing to pay a higher price. The applicants' standing under section 168(5) was challenged. The Court of Appeal held that, because the sale was alleged to have been at an undervalue, they had standing as creditors of an insolvent company, but that they would have lacked standing as disappointed prospective purchasers of the asset. Nourse LJ said at p.393:

> "…it is perfectly clear that unless and until there proves to be a surplus available for contributories (a most improbable event), 'persons aggrieved' must include the company's unsecured creditors. If the liquidator disposes of an asset of the company at an undervalue, their interests are prejudiced and each of them can claim to be a person aggrieved by his act. Such was the position of the applicants here. Mr Rayner James submitted that they brought the application not as creditors but as persons who had not been given an opportunity to make an offer for the asset. In the latter capacity alone, like any other outsider to the liquidation, they would not have had the locus standi to apply under section 168(5)."

16. The second case, *In re Edengate Homes (Butley Hall) Ltd (in liquidation)*, *Lock v Stanley* [2022] EWCA Civ 626, [2022] 2 BCLC 1, was decided after the Court of Appeal had given judgment in the present case. It concerned an application under section

168(5) of the IA 1986 by a creditor and former director of a company in liquidation to set aside the assignment of claims by the liquidator to a third party. The claims, totalling some £1.2 million, were against the applicant and members of her family. The liquidator had no funds to proceed with the claims but under the terms of the assignment the company could receive some £800,000 if the claims were fully successful. The application was made on the basis that the applicant and her family had not been given the opportunity to buy the claims and thereby bring them to an end. However, there had been no suggestion that the applicant was prepared to match or beat the third party's offer.

17. The judgment was given by Males LJ, with whom Asplin and Stuart-Smith LJJ agreed. The decision of the judge below to dismiss the application on the grounds that the applicant lacked standing under section 168(5) of the IA 1986 was affirmed. Although the applicant was a creditor of the company, she was not making the application to advance the interests of the creditors by increasing the funds that might be available for distribution, but she was instead seeking to advance her personal interests and those of her family as defendants to the proceedings brought by the assignee. The fact that she was a creditor did not therefore give her standing.

18. The effect of the principles discussed above is that it is only exceptionally the case that a bankrupt will have standing to make an application under section 303(1).

19. Nonetheless, even where there is no surplus nor the likelihood of one, there may be circumstances in which a bankrupt will have standing. The decision of Ferris J in *Engel v Peri* [2002] EWHC 799 (Ch), [2002] BPIR 961 is an example. The bankrupt applied under section 282(1)(b) to annul his bankruptcy on the basis that all his debts would be paid in full out of third-party funds or would be secured by a payment into court. The bankrupt was required under the section to pay or secure the expenses of the bankruptcy. He considered the trustee's remuneration and legal fees to be excessive and applied under section 303(1) for them to be fixed by the court. The trustee objected that the bankrupt had no standing to make the application, on the grounds that there was and would be no surplus after payment of all the debts and expenses. Ferris J rejected the submission that this was a universal requirement, holding that what a bankrupt had to show was "some substantial interest which has been adversely affected by whatever is complained of" (para 14). Whether a bankrupt could do this depended on the facts of the particular case. As regards the case before him, he said at para 19:

> "In the context of an application for annulment under section 282(1)(b) the amount of the trustee's remuneration and expenses may be a matter of considerable significance,

> because it affects the amount of money required to be paid in order to satisfy the court of the matters referred to in the subsection. In my view the bankrupt has a clear interest in this, for he will want the annulment to be obtained as cheaply as possible. This will clearly be the case where the bankrupt is persuading a third party to lend him the money or intends to enter into an obligation to indemnify a third party who puts up the necessary funds. I consider that it will also be so even where there is to be no formal obligation as between the bankrupt and the third party. The prospects of the third party making funds available are likely to be increased if the amount required is kept to a minimum. Further the bankrupt is likely to feel under a moral obligation to indemnify the third party even where he is under no legal obligation."

20. We were referred to no other authority where the issue of standing was raised and where, in the absence of an actual or likely surplus, a successful application under section 303(1) of the IA 1986 or its statutory predecessors had been made by a bankrupt. It is an important, indeed critical, feature of *Engel v Peri* that the bankrupt was applying in his capacity as a bankrupt and in respect of an issue - the level of the trustee's costs and expenses which was directly relevant to an annulment of his bankruptcy - which arose only by reason of his bankruptcy.

21. Guidance as to the circumstances in which a bankrupt will have standing to apply under section 303(1) may be gained by analogy from the circumstances in which creditors or others have been held to have, or not to have, standing under section 303(1) or section 168(5). I have referred above to cases in which applications by persons who were creditors have failed because they were not applying in support of their rights or interests as creditors but in support of other rights or interests.

22. Cases involving persons other than creditors have likewise shown standing to be limited to rights or interests arising specifically out of the liquidation or bankruptcy.

23. *Mahomed v Morris* [2000] EWCA Civ 46, [2000] 2 BCLC 536 concerned an application by persons who were not creditors of the company in question (BCCI) but had provided security for debts owed by a third party to the company. The principal debtor had also provided security in the form of a charge over promissory notes issued by a third party. A dispute as to the extent of that security was compromised by the liquidator of the company. The applicants objected to the terms of the compromise, arguing that BCCI was entitled to a greater number of the promissory notes. They

claimed to be adversely affected on the basis that, if the compromise had been on terms more favourable to BCCI, they would have been entitled by subrogation to the surplus notes.

24. The Court of Appeal held that the applicants lacked standing under section 168(5) to challenge the decision of the liquidators to compromise the dispute. It was not enough "that the person claiming to be aggrieved by the act or decision of the liquidator in respect of assets of the company is a surety when his subrogation rights do not in any way depend on the company being in liquidation" (para 26 per Peter Gibson LJ). The applicants were "outsiders to the liquidation" (para 28 per Peter Gibson LJ).

25. There are only three cases to which we were referred where a third party has made an application under sections 303(1) or 168(5) of the IA 1986 without a successful challenge to their standing.

26. The first is *In re Hans Place Ltd* [1992] BCC 737, [1993] BCLC 768. The liquidator had exercised the power conferred by section 178 of the IA 1986 to disclaim by notice "onerous property", defined so as to include any property of the company "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". The disclaimer operated to determine "the rights, interests and liabilities of the company in or in respect of the property disclaimed". Following service by the liquidator of a notice of disclaimer of a lease, the landlord applied under section 168(5) of the IA 1986 for an order that the disclaimer be set aside on the grounds that it had the effect of terminating, as regards future liabilities of the company, a guarantee given by a third party. Under the law as it stood before the IA 1986 came into force, a disclaimer required an order of the court, and the practice of the court had been to refuse the order if the effect would be to release a guarantor of the company's liabilities.

27. The application was refused, but no objection was taken to the landlord's standing. In my judgment, the parties and the judge were right in that case to proceed on the basis that the landlord had standing. Disclaimer is a procedure uniquely available in a liquidation. It involves the exercise by the liquidator of a power which is specific to his position as liquidator, and which directly affects the landlord. The liquidator's decision to disclaim is incapable of challenge by the landlord save under section 168(5) of the IA 1986. In the absence of clear words to contrary effect, Parliament cannot be taken to have conferred such a power on a liquidator without providing some means for the landlord to challenge it. The landlord is properly regarded as a person "aggrieved by an act or decision of the liquidator".

28. In *Mahomed v Morris*, Peter Gibson LJ noted at para 24 that *In re Hans Place Ltd* was the only authority cited to the court where a person who was not a creditor or a contributory had been allowed to apply under section 168(5) of the IA 1986. Having stated that it cannot have been the intention of Parliament that any outsider to the liquidation dissatisfied with some act or decision of the liquidator could challenge it under "the special procedure" of section 168(5), Peter Gibson LJ continued at para 26, in terms which I would endorse:

> "However, I would accept that someone, like the landlord in *In Re Hans Place Ltd* …, who is directly affected by the exercise of a power given specifically to liquidators, and who would not otherwise have any right to challenge the exercise of that power, can utilise section 168(5). It may be that other persons can properly bring themselves within the subsection."

29. Another case where a third party was held to have standing was *Woodbridge v Smith* [2004] BPIR 247. The applicant's husband had been made bankrupt, and she intended to apply for the annulment of his bankruptcy. To that end, she paid all his creditors and she was further required to pay the trustee's fees and expenses. She applied under section 303(1) of the IA 1986 to challenge the trustee's remuneration. Registrar Baister held that she had standing to do so. In my judgment, this decision was right. As in *Engel v Peri* and *In re Hans Place Ltd*, the application concerned a matter which was unique to a bankruptcy or liquidation and was made by a person with a legitimate interest in making it.

30. The third case was *In re Cook* [1999] BPIR 881. In response to a demand by HMRC for production of pre-bankruptcy documents protected by legal professional privilege, the trustee waived the bankrupt's privilege. The solicitor holding the documents challenged the trustee's authority to waive the bankrupt's privilege. Stanley Burnton QC, sitting as a deputy judge of the High Court, held that the solicitor had standing to raise the issue in an application under section 303(1), as being a person who came "at the extremity of the class of persons who may be 'dissatisfied'": p 883. Although the issue might have been raised in interpleader proceedings, with the bankrupt, the trustee and HMRC as respondents, I think the judge was right to say that the solicitor could raise it under section 303(1). The question of the trustee's authority, if any, to waive the bankrupt's privilege concerned the extent of a trustee's statutory powers and was therefore an issue peculiar to bankruptcy. The Court of Appeal has since held that a trustee has no such authority: *Shlosberg v Avonwick Holdings Ltd* [2017] Ch 210.

31. The very limited circumstances in which applicants have been held to have standing under section 303(1) of the IA 1986 and its predecessors reflect the position before the mid-19th century reforms. Although there was no statutory basis for challenge before the enactment of section 20 of the Bankruptcy Act 1869 in terms very similar to section 303(1), bankruptcy law and practice allowed for challenge by the bankrupt. The position was summarised in *Griffith and Holmes: The Law and Practice of Bankruptcy Vol II* (1867) at p.938:

> "In the Court of Bankruptcy [the bankrupt] may petition in all matters relating to his bankruptcy, in which he has a direct interest: as, for instance, to annul the fiat..., to enlarge the time for his surrender..., or, in respect of the allowance ..., or of the surplus of his estate..."

32. The "direct interests" of the bankrupt mentioned in that passage all arose specifically in the bankruptcy process. The entitlement to a surplus is self-explanatory. As to the rest: the reference to annulment of the fiat was to annulment of the bankruptcy; "surrender" referred to the bankrupt's attendance at court for examination, a process which conferred certain privileges on the bankrupt from arrest by other creditors; and the "allowance" was an amount which the court or the creditors could permit the bankrupt to draw from the estate for living expenses.

33. There is no support in the contemporary Parliamentary records for thinking that section 20 of the Bankruptcy Act 1869 was intended to introduce a broader regime. Indeed, it would appear that the language of section 20 was based on the evidence given on 13 May 1864 by Edward Holroyd, a Commissioner in Bankruptcy, to the Parliamentary Select Committee appointed to consider further bankruptcy legislation. When asked about the role of the court, he said: "The interference of the Court under a bankruptcy, is generally at the instance of the assignees, or creditors, or the bankrupt, or it may be of some other party who is aggrieved by the bankruptcy, and who invokes the aid of the Court" (para 1710). I am grateful to counsel for the appellant for their research into the state of bankruptcy law and practice as it existed before the enactment of the mid-19th century Bankruptcy Acts.

34. I turn now to the facts of the present appeal and to the judgments below.

The facts

35. The bankruptcies of Mr and Mrs Brake have unfortunately engendered an unusually large number of disputes. I will confine this section to a summary of only

those pleaded facts that are strictly relevant to the issue raised by this appeal. The appeal arises from an application to strike out the application made under section 303(1) by Mr and Mrs Brake, on the grounds that they lacked the standing to make it. On this basis, the facts pleaded by them must for present purposes be assumed to be true.

36. Between February 2010 and June 2013, Mr and Mrs Brake ("the Brakes") and Patley Wood Farm LLP ("PWF"), an investment vehicle for Lorraine Brehme ("Mrs Brehme"), were in partnership carrying on an accommodation and events business under the name "Stay in Style" (the "Partnership"). Disputes arose between the partners which were referred to arbitration, which concluded with a final award in favour of PWF, a costs order against the Brakes and the dissolution of the Partnership.

37. The Partnership's property included West Axnoller Farm (the "Farm"), which Mrs Brake had purchased in 2004 and had introduced into the Partnership in 2010. The Farm includes West Axnoller House (the "House"). The adjacent West Axnoller Cottage (the "Cottage") had been purchased with Partnership funds from a third party. It was registered in the names of the Brakes and Mrs Brehme and held as Partnership property. Mrs Brake further owned, in her personal capacity, two small parcels of land surrounding the Cottage (the "Adjacent Land").

38. The Brakes lived in the House and used the Cottage when the House was let to paying guests. In December 2012, the Brakes commenced a claim against PWF and Mrs Brehme alleging breach of an oral agreement to transfer the Partnership's beneficial interest in the Cottage to the Brakes personally ("the 2012 Cottage Proceedings"). The Brakes sought specific performance, alternatively damages for breach of contract, alternatively a declaration of a beneficial interest in the Cottage by way of proprietary estoppel. The 2012 Cottage Proceedings have been stayed since February 2015.

39. In October 2014, following defaults by the Partnership, the holder of a first legal charge appointed receivers of the Farm (but not the Cottage, which was not subject to a charge). In July 2015, the receivers sold the Farm to a company called Axnoller Events Ltd ("AEL"). Its only registered shareholder acted as an undisclosed nominee for the Brakes. AEL operated a wedding business from the Farm thereafter.

40. On 12 May 2015, the Brakes were made bankrupt on the petition of PWF in respect of the unpaid costs of the arbitration. On 30 July 2015, Duncan Swift ("the Trustee") was appointed as the Trustee in both bankruptcies.

41. The Brakes continued to live in the House and, as before, to use the Cottage when the House was let.

42. The Partnership went into administration in July 2016 and into liquidation in May 2017.

43. In February 2017, AEL was acquired by the appellant in the present appeal, The Chedington Court Estate Ltd ("Chedington"), a company owned by Dr Geoffrey Guy ("Dr Guy") and his wife. Mrs Brake was employed as manager of the wedding business, and Mr Brake as facilities and land manager. It was contemplated by the terms of the share purchase agreement that AEL would seek to acquire the Cottage.

44. On 8 November 2018, the Brakes were given notice by Chedington and AEL, terminating their employment and requiring them to vacate the House. They refused to vacate the House and on 19 November 2019 possession proceedings were issued against them ("the House Possession Proceedings").

45. After the Brakes' dismissal, both Dr Guy and the Brakes expressed an interest to the liquidators of the Partnership ("the liquidators") in purchasing the Cottage. Accordingly, on 18 December 2018, the liquidators invited bids for the Cottage from Mrs Brake and Dr Guy.

46. On the same day, the Trustee sold the Adjacent Land, which had vested in him as Mrs Brake's trustee, and interests in horses and furniture forming part of the bankrupt's estates, to Dr Guy for £102,000 (the "Adjacent Land Sale Agreement").

47. On 20 December 2018, Dr Guy submitted a bid of £500,000 for the Cottage on behalf of Chedington. On 21 December 2018, Mr and Mrs Brake submitted a bid of £476,000 for the Cottage in their capacity as trustees of the Brake Family Settlement (the "Brake Trust"). The liquidators accepted Chedington's bid subject to contract.

48. Following the acceptance of Chedington's bid, Dr Guy asked the liquidators to apply to the court for an order to remove the Brakes from the legal title to the Cottage, to enable the Cottage to be transferred to Chedington. As mentioned above, the Cottage remained registered in the names of the Brakes and Mrs Brehme but was a partnership asset, subject to the interests and rights (if any) asserted by the Brakes in the 2012 Cottage Proceedings. Such interests and rights formed part of their bankrupt's estates and had vested in the Trustee.

49. The liquidators were unwilling to make the application requested by Dr Guy. So Dr Guy agreed a proposal with the Trustee, involving in summary the following steps. The liquidators would sell the Partnership's interest in the Cottage to the Trustee for £500,000. Dr Guy would lend the purchase price to the Trustee, who would contract to transfer the combined Partnership and bankruptcy interests in the Cottage to Chedington at the same price. The Trustee would make an application to the court to obtain a clean legal title to the Cottage, and the sale to Chedington would complete once the order had been obtained. In the meantime, a licence would be granted to Chedington to occupy the Cottage pending completion of the sale.

50. This arrangement was agreed in writing in a letter dated 10 January 2019, signed by the parties ("the Facilitation Agreement").

51. The Facilitation Agreement provided that the Trustee would "not receive any direct benefit to the bankruptcy estates other than the facilitation price". The facilitation price comprised a lump sum of £30,000 and £3,000 per month until completion of the transfer of the Cottage to Chedington or earlier termination. These funds were to be paid, as to one third, to the bankruptcy estates of the Brakes so as to be available to their creditors and, as to two-thirds, to the Trustee "to spend the necessary time on these matters as it progresses, without that being a cost to the bankruptcy estates and therefore, the creditors in the two bankruptcy estates."

52. The contracts, loan and licence contemplated by the Facilitation Agreement were made on or about 15 January 2019.

53. At the same time, the Trustee provided to Dr Guy a notice which stated that the Trustee had purchased the Cottage and was entitled to use reasonable, lawful and appropriate measures to enter and secure the property, and that by virtue of the Licence, the employees and agents of Chedington were authorised to enter the property. On 18 January 2019, agents of Chedington entered the Cottage and changed the locks.

The proceedings

54. The Brakes issued applications on 6 February and 12 February 2019. The first application ("the liquidation application") was issued under section 168(5) of the IA 1986 in the liquidation of the Partnership by the Brakes in their capacity as trustees of the Brake Trust. They sought orders against the liquidators setting aside the sale of the Cottage and requiring the liquidators to accept the bid made by them as trustees in place of the bid made by Chedington.

55. The second application ("the bankruptcy application") was issued under section 303(1) of the IA 1986 by the Brakes, both in their personal capacities and in their capacities as trustees of the Brake Trust. So far as relevant, they sought orders setting aside the Bankruptcy Sale Agreement, the Adjacent Land Sale Agreement and the Licence; declarations that all the Trustee's interest in the Cottage had re-vested in Mr and Mrs Brake and all his interest in the Adjacent Land had re-vested in Mrs Brake pursuant to section 283A(2) of the IA 1986 on or about 15 May 2018 on the ground that, together with the House, they comprised the Brakes' principal residence; and, as an alternative to such declarations, a sale of the Trustee's interests in those properties under the direction of the court. The bankruptcy application also sought an order removing the Trustee in both bankruptcies.

56. Directions were given for the service of combined statements of case for these and other associated applications. The applicants' case was set out in points of claim dated 28 May 2019 and in an amended reply dated 3 January 2020.

57. The Brakes allege that the purpose of the arrangement was to assist Dr Guy in his dispute with the Brakes and that, after Mrs Brake notified the Trustee by email on 12 December 2018 that the Cottage and the Adjacent Land had been the subject of re-vesting in the Brakes and that she was hoping to instruct solicitors by 17 December 2018, the Trustee was prompted to accelerate the arrangements. They allege that Dr Guy informed the Trustee that he would only buy the Adjacent Land if he could be sure of also buying the Cottage. They allege that the sale of the Adjacent Land was contrary to marketing advice given to the Trustee that the Cottage and the Adjacent Land should be marketed and sold together to maximise value.

58. The Brakes allege that no reasonable trustee would have entered into these arrangements, when it was obvious that the Brakes were a special purchaser and would pay substantial sums for the Cottage and the Adjacent Land, without informing them that they were for sale and inviting bids from them. Instead, the Trustee entered into the arrangements to assist Dr Guy in his disputes with the Brakes, without regard "for the honest and true purpose of the bankruptcies". The Trustee disregarded the beneficial interests claimed by the Brakes in the Cottage and disposed of them to Chedington for no consideration and without investigating them. He also sought to frustrate and undermine the statutory re-vesting of the Cottage and the Adjacent Land in the Brakes under section 283A of the IA 1986. The Brakes also alleged that "the clandestine nature of the conduct and dealings of Mr Swift…in relation and pursuant to the Arrangements together constitute breaches to a high degree of the fundamental principles of integrity, objectivity and professional behaviour required of Mr Swift by the Insolvency Code of Ethics (as adopted by all the recognised professional bodies)".

59. In the Court of Appeal ([2020 EWCA Civ 1491, [2021] Bus LR 577), Asplin LJ summarised the claim of unlawful conduct on the part of the Trustee as follows:

> "16. The Brakes plead that Mr Swift's conduct in the bidding process was unlawful because he: hired out his statutory powers to Chedington; borrowed money from Chedington in order to make the nominee bid without any power to do so; bought into the bankruptcy estate and immediately sold his resulting interests in the Cottage (again without power to do so); and failed to inform the Brakes or invite them to bid. More broadly, they allege that Mr Swift acted deliberately to conceal the transactions from them."

60. Although serious allegations are made against the Trustee, the Brakes accept that they make no allegation of fraud against him.

61. In the event, neither the liquidators nor the Trustee participated to any significant extent in the proceedings. The Trustee did not resist the making of an order dated 11 June 2019 by which he was removed from office as trustee. The replacement trustees have not participated and have stated that they are neutral as to the outcome of the proceedings. By a consent order dated 27 August 2019, the liquidators confirmed that they would not defend the liquidation application. However, Chedington continues to resist the applications. It is concerned to preserve its agreements to purchase the Cottage and the Adjoining Land. In their amended reply, the Brakes plead that Chedington had notice of the wrongful acts of the Trustee and that it cannot claim the protection of a bona fide purchaser for value without notice.

62. On 30 January 2020, Chedington applied to strike out the liquidation application and parts of the bankruptcy application on the grounds that the applicants lacked standing under sections 168(5) and 303(1) of the IA 1986. The remaining part of the bankruptcy application concerned the Brakes' claim that the Trustee's interest in the Cottage and in the Adjoining Land had revested in them pursuant to section 283A(2) of the IA 1986. That claim failed at first instance (see *Brake v Swift* [2020] EWHC 1810 (Ch), [2020] 4 WLR 113) on the ground that the Cottage had not been the Brakes' sole or principal residence at the date of their bankruptcies. An application to the Court of Appeal for permission to appeal was refused.

The judgments below

63. At the time when the applications were made, the Brakes had been discharged from their bankruptcies. The parties and the courts below correctly proceeded on the basis that the reference to a bankrupt in section 303(1) includes a former bankrupt.

64. In an *ex tempore* judgment given on 2 March 2020, HH Judge Matthews, sitting in the High Court, acceded to Chedington's application. He distinguished between the position of the Brakes in their capacities as trustees of the Brake Trust and their position in their personal capacities as bankrupts. As trustees, they were outsiders to the bankruptcies with no interest save as potential bidders for the Cottage and the Adjoining Land. It was chance that the trustees happened to be the bankrupts. Applying authorities such as *In re Edennote Ltd* and *Mahomed v Morris*, he struck out the application so far as it was made by the Brakes as trustees. As regards the application made in their personal capacities as bankrupts, he struck out the claims (except those for revesting under section 283A(2)) on the grounds that they lacked standing as there was no evidence that there was likely to be a surplus in their bankrupt's estates. HHJ Matthews referred to *Engel v Peri*, where Ferris J said that the likelihood of a surplus was not "a universal requirement" and that there could be other cases where the bankrupt had "some other substantial interest which has been adversely affected", but at least implicitly held that no such interest existed in this case.

65. In a separate judgment, HHJ Matthews struck out the liquidation application, on the grounds that, as trustees of the Brake Trust, the Brakes' only interest was as potential bidders for the Cottage and the Adjoining Land.

66. The Court of Appeal dismissed the Brakes' appeal as regards the liquidation application and as regards that part of the bankruptcy application brought by the Brakes as trustees of the Brake Trust, after a careful analysis of the authorities concerning the standing of applicants whose only interest is as potential bidders for property forming part of the insolvency estate.

67. Giving the only reasoned judgment, with which Floyd and Henderson LJJ agreed, Asplin LJ addressed the application so far as it was made by the Brakes in their personal capacities at paras 66-87.

68. Asplin LJ first considered and rejected a submission, only faintly made before the Court of Appeal, that a bankrupt had unqualified standing under section 303(1). She recorded at para 69 that "it is settled law that a bankrupt needs to show more in

order to question the conduct of the trustee in bankruptcy". This is undoubtedly correct and is not challenged before this Court. As Asplin LJ said at para 70, the real question is what more is required for a bankrupt to have standing.

69. Asplin LJ rejected the approach taken by HHJ Matthews that a bankrupt has standing only where there is or is likely to be a surplus in the estate. Relying in particular on the judgment of the Privy Council given by Lord Millett in *Deloitte & Touche AG v Johnson* [1999] 1 WLR 1605 ("*Deloitte & Touche*") and on the judgment of Ferris J in *Engel v Peri*, she put the test for standing as follows: the bankrupt "must be able to show that he has a substantial interest which has been affected by the conduct complained of and a direct interest in the relief sought": para 78. The potential existence of a surplus was one way of being able to demonstrate a substantial interest but not the only way. She derived the need for a substantial interest which has been adversely affected by the trustee's conduct from the judgment of Ferris J in *Engel v Peri* and the need for a direct interest in the relief sought from the judgment of Lord Millett in *Deloitte & Touche*. She rejected submissions by counsel for both parties that sought to define further these requirements.

70. Asplin LJ stated her conclusion that the Brakes had standing at para 85:

> "It seems to me that in the light of the pleaded conduct, which for this purpose is assumed to be true, the Brakes in their capacity as bankrupts have a legitimate and substantial interest in the relief sought sufficient to give them standing to make an application under section 303(1). At the very least, their interests were substantially affected by the grant of the Licence, the consequences which flowed from it and Mr Swift's alleged unlawful acts. This is not a case such as *Dodwell* …, in which the bankrupts seek merely to interfere in every day conduct of the bankrupt estate or in transactions effected by the trustee merely as a matter of commercial judgment. It seems to me that assuming the allegations to be true, it is not only perfectly arguable that at least some of the acts satisfy the substantive perversity test expounded in the *Edennote* … and *Mahomed* … cases but also that the Brakes have a direct interest in the relief sought. It also follows that when determining the preliminary question of standing, the judge was wrong to decide definitively that the acts complained of were not acts by Mr Swift in the bankruptcy."

71. Put shortly, she concluded that the Brakes had standing because their interests were substantially affected by the impugned conduct of the trustee and because, in their capacities as bankrupts, they have a direct interest in the relief they seek.

Standing under section 303(1) of the IA 1986

72. It is important to be clear that the only basis of the bankruptcy application now remaining, following the decision of the Court of Appeal, is the claim by the Brakes in their personal capacities that the Trustee interfered with their right to possession of the Cottage by entering into various contractual arrangements with Chedington. The claim as it related to the revesting of the Cottage under section 283A of the IA 1986 had already failed before HHJ Matthews on the grounds that the Cottage had not been the Brakes' sole or principal residence, and permission to appeal had been refused. The claim as it related to actual or potential bids by the Brakes to purchase the Cottage had been struck out by HHJ Matthews for lack of standing, whose decision in this respect was affirmed by the Court of Appeal.

73. It should be noted in respect of the Brakes' claim to possession of the Cottage that in April 2019 the Brakes issued proceedings against Chedington for declaratory and other relief as regards their exclusion from the Cottage. A number of grounds were advanced but only one succeeded. The successful ground was that, as the Brakes were in possession of the Cottage, they were entitled to succeed in an action for unlawful eviction, despite the admitted ownership of the entire beneficial interest in the Cottage by the Trustee for whom the Brakes held their legal title as bare trustees, and although the Trustee would very likely have succeeded in a claim for possession: see *Brake v The Chedington Court Estate Ltd* [2022] EWCA Civ 1302.

74. As the review of the authorities earlier in this judgment shows, standing under section 303(1) has been limited to (i) creditors applying in respect of conduct by a trustee which is adverse to their interests as creditors, (ii) bankrupts applying in respect of conduct by a trustee which is adverse to their interest in the estate, which necessarily requires showing a real prospect of a surplus in the estate, and (iii) persons (whether creditors, bankrupts or others) whose rights or interests arise specifically from the bankruptcy itself. The same approach has been applied to standing under section 168(5) of the IA 1986, with the necessary modification that, in the case of a company, there is not a bankrupt individual but there are contributories.

75. The first two categories reflect the legal position that a bankrupt's estate, and the assets of a company in liquidation, are held to be applied in accordance with the terms of the statutory trusts created by the applicable provisions of the IA 1986. As

with any other trust, those interested in the assets or in their proper application are entitled to apply to court for relief for the protection of those interests. These categories are necessarily restricted to creditors in a bankruptcy or liquidation and, in the case of a bankruptcy or liquidation where there is or is likely to be a surplus, the bankrupt and contributories. Members of a company in a liquidation who may be liable to make contributions, for example members with nil-paid or partly paid shares or members of an unlimited company, would, I consider, be in the same position as creditors but this has not, so far as I am aware, been considered in any case.

76. The third category comprises a very small number of other applications which have arisen directly out of provisions which are peculiar to the insolvency regime. As discussed above, the relevant cases have concerned the disclaimer of a lease (*In re Hans Place Ltd*) and the quantification of a trustee's expenses for the purposes of securing an annulment of the bankruptcy (*Engel v Peri* and *Woodbridge v Smith*). As Peter Gibson LJ said in *Mahomed v Morris* at para 26, the landlord in *In re Hans Place Ltd* had standing because it was "directly affected by the exercise of a power given specifically to liquidators, and who would not otherwise have any right to challenge the exercise of that power". There may be other provisions, now or in the future, which could on a similar basis result in standing for a person aggrieved or dissatisfied with an act, omission or decision of the officeholder. An example may well be section 283A of the IA 1986, under which the Brakes made an unsuccessful claim, as mentioned above. Another possible example discussed in argument was a claim by a bankrupt to tools, equipment and other property under section 283 of the IA 1986.

77. The test for standing propounded by the Court of Appeal in the present case is placed on a basis that is far broader than is warranted by any prior authority.

78. The test is supported by the Brakes on this appeal. While accepting that a bankrupt does not automatically have standing under section 303(1), they submit that what needs to be shown is that the bankrupt has a legitimate interest in the relief sought, which in substance is indistinguishable from "some substantial interest which has been adversely affected by whatever is complained of" (per Ferris J in *Engel v Peri* at para 14).

79. The Brakes submit that their legitimate interest arises in this case because their possessory rights in relation to the Cottage were wrongfully interfered with by the Trustee acting as trustee. It is the existence of these legal rights, as opposed to a mere hope or expectation, which, they submit, distinguishes this case from cases such as *In re Edennote Ltd* where the applicant was no more than a potential bidder.

80. At the start of para 85 of her judgment, Asplin LJ said that the Brakes "in their capacity *as bankrupts*" had a legitimate and substantial interest in the relief sought (emphasis added). With respect, this cannot be sustained, as the Brakes in their submissions to this Court recognised. The Brakes' possessory rights to the Cottage were unconnected to their position as bankrupts. The actions of the Trustee which they challenge were directed to them as persons in possession of the Cottage, not as bankrupts. Precisely the same actions could have been taken by the Trustee if third parties had been in possession. Equally, the interest that the Trustee was asserting as regards the Cottage did not derive from any special powers conferred on trustees in bankruptcy, as opposed to their general powers of management.

81. The Brakes were careful to formulate their submissions to this Court on a basis which did not require them to assert an interest in the relief in their capacities as bankrupts. All that is required, they submitted, is that a trustee *qua* trustee should have wrongfully interfered with an existing right of the applicant.

82. Mr Curl KC, appearing for the Brakes, embraced the logical and necessary consequence of this submission that any person whose rights were wrongfully interfered with by a trustee could apply for relief under section 303(1), provided only that the trustee was acting as trustee, and not for example in a personal capacity.

83. If correct, this submission would have far-reaching effects on the scope of section 303(1) and, by a parity of reasoning, section 168(5) of the IA 1986.

84. It appears that in their submissions the Brakes use "wrongfully" to mean "unlawfully" in two senses. In one sense, it refers to conduct which is directly actionable by the complainant in any event. For example, if a trustee in that capacity occupied land forming part of the bankrupt's estate and caused or failed to abate a nuisance to adjacent land, the person in possession or occupation of the adjacent land could, on the Brakes' case, make a claim against the trustee not only in an ordinary civil action for nuisance, but also by an application for relief under section 303(1) of the IA 1986. In the other sense, a complainant would have standing if the rights of the complainant were interfered with by the trustee acting beyond the trustee's statutory powers or in breach of duty as trustee.

85. In both cases, this would enable an application to be made, whether by a bankrupt, a creditor or a stranger to the bankruptcy, under section 303(1) in respect of a right or interest which was extraneous to the bankruptcy.

86. Insofar as the alleged wrongful action was in any event actionable by the complainant, such as by an action in tort, there is no sound basis for affording to the complainant an alternative procedure for pursuing the claim just because the wrongdoer happens to be a trustee acting in that capacity, and there is no reason to think that the legislative intention behind section 303(1) was to provide any such alternative procedure.

87. Insofar as the alleged wrongful action was not otherwise actionable by the complainant, but was unlawful by reason of being an abuse of the trustee's powers, the Brakes' submission would enable a person to whom the duties governing the exercise of those powers were not owed to seek relief in respect of such abuse. It is contrary to principle for a person to whom a duty is not owed to be able to seek relief in respect of a breach of that duty. If a trustee of a settlement or other trust, or a director of a company, takes steps in breach of fiduciary duty which interfere with the rights of a third party, the third party will have such rights (if any) in tort or otherwise against the trustee or director as the law provides, but the third party will not have any standing to seek relief for breach of fiduciary duty, as that duty is owed to the beneficiaries of the trust or (as the case may be) to the company. There is no reason to suppose that there was any legislative intention to enable such relief to be sought by third parties uniquely against trustees in bankruptcy under section 303(1) or against liquidators under section 168(5) of the IA 1986.

88. To the contrary, the enactment of section 304 of the IA 1986 demonstrates that this was not the intention. Section 304 provides for misfeasance proceedings against a trustee to be brought for the benefit of the estate by a creditor "or (whether or not there is, or is likely to be, a surplus for the purposes of section 330(5) (final distribution)) the bankrupt himself". The inclusion of the bankrupt as a possible applicant even in the absence of any likely surplus is significant, because it extended the class of applicants to a person who had no interest in the bankrupt's estate.

89. To ensure that proceedings under section 304 are brought by bankrupts only in appropriate cases, the prior leave of the court is required under section 304(2). This reflects the view expressed in the Report of the Cork Committee (Insolvency Law and Practice: Report of the Review Committee (1982, Cmnd. 8558) ("the Cork Committee Report") at para 783 that without this filter, "there is a real risk that insolvency practitioners would be unfairly harassed by litigation". It protects the trustee and the creditors from the distraction and delays caused by having to defend inappropriate proceedings and from the expenditure of the estate's funds in legal fees. The appreciation of these concerns has been a factor in restricting the circumstances in which bankrupts can apply under section 303(1) and its predecessors: see *In re A Debtor*, *Ex p The Debtor v Dodwell* [1949] Ch 236 at p 241 per Harman J.

90. The limited provisions of section 304 are to be contrasted with the recommendations in this respect of the Cork Committee Report on which many of the reforms brought into force by the IA 1986 were based. The Report stated:

> "778. Under the present law, it is extremely difficult for a bankrupt himself to take any action against his trustee, in respect of loss, damage, or other wrong which he (or his estate) may have suffered at the trustee's hands. This is so despite the enactment of section 80 [of the Bankruptcy Act 1914]…
>
> 779. …In the few cases that are known to have been heard, Bankruptcy Courts have consistently adopted a narrow construction of the provision so that in practice the bankrupt is denied any effective right of complaint in all but the most exceptional cases. It seems to be still the law that the existence of a surplus or the real probability that such a surplus might, but for the trustee's wrongdoing, have resulted, is a prerequisite of the bankrupt's right to move the Court on questions of maladministration."

91. The Committee recommended that a trustee should owe a fiduciary duty, defined by statute, to the bankrupt, creditors and other interested parties, giving rise to a cause of action for breach of statutory duty, if damage is sustained as a result of breach of the duty. A bankrupt could bring proceedings for breach, but only with the leave of the court. This recommendation was not accepted, except to the limited extent now contained in section 304.

92. As mentioned earlier, Asplin LJ derived support from Lord Millett's judgment in *Deloitte & Touche*, an appeal to the Privy Council from the Court of Appeal of the Cayman Islands. The case did not concern an application under a local equivalent of section 303 or section 168 of the IA 1986. It was an application to remove the joint liquidators of a company, made not by a creditor or contributory, but by the former auditor of the company which was a defendant to negligence proceedings brought by the joint liquidators. In the alternative, an order was sought restraining the joint liquidators from prosecuting the action. It was alleged that the joint liquidators were subject to a serious conflict of interest. The joint liquidators applied to strike out the originating summons on the grounds that the applicant lacked standing to make the application.

93. Under the relevant section of the Cayman Islands legislation, a liquidator could be removed by the court "on due cause shown". Like its UK counterpart, the section did not specify who might make the application. Lord Millett observed that in all the relevant English authorities, the court had consistently regarded the creditors (in the case of an insolvent liquidation) and the contributories (in the case of a solvent liquidation) as the proper persons to make the application, being the only persons interested in the liquidation. At page 1611, Lord Millett identified two issues that arise when a question of an applicant's standing arises. First, if the statute specifies the categories of person who may make the application, the applicant must come within one of those categories. Secondly, the court will in any event "act only on the application of a party with a sufficient interest to make it". To be a proper person to make the application, the person must have "a legitimate interest *in the relief sought*". Thus, in the case of an insolvent company, the court will not remove a liquidator on the application of a contributory, unless the applicant is also a creditor (*In re Corbenstoke Ltd (No 2)* [1990] BCLC 60).

94. In considering whether the applicant had standing to apply for the removal of the joint liquidators, Lord Millett said at p 1611:

> "The company is insolvent. The liquidation is continuing under the supervision of the court. The only persons who could have any legitimate interest of their own in having the liquidators removed from office as liquidators are the persons entitled to participate in the ultimate distribution of the company's assets, that is to say the creditors. The liquidators are willing and able to continue to act, and the creditors have taken no step to remove them. The [applicant] is not merely a stranger to the liquidation; its interests are adverse to the liquidation and the interests of the creditors. In their Lordships' opinion, it has no legitimate interest in the identity of the liquidators, and is not a proper person to invoke the statutory jurisdiction of the court to remove the incumbent office-holders."

95. As regards the application to restrain the joint liquidators from prosecuting the proceedings, Lord Millett observed that the court's inherent jurisdiction to control the conduct of the liquidators as officers of the court was beyond dispute, but held that the applicant was not a proper person to invoke the jurisdiction. Its only interest was as a defendant to the proceedings brought by the joint liquidators, and this did not give it standing. Lord Millett said at p 1612:

> "If the company were not in liquidation, the [applicant] could not be heard to complain of such conduct on the part of its directors. It would be a matter within the exclusive competence of the shareholders. Their Lordships do not accept that the fact that the company is in insolvent liquidation and that the liquidators' duties are owed to the creditors rather than the shareholders gives the [applicant] a standing to complain which it would not otherwise have had."

96. I have quoted at some length from Lord Millett's judgment because it featured with some prominence both in the judgment of Asplin LJ and in the submissions of counsel for both parties in this Court. It is helpful in focusing attention on the relief claimed by the applicant, but I do not see that it assists the Brakes or supports the conclusion of the Court of Appeal. The proposition which the Brakes draw from it, and on which Asplin LJ relied, is expressed in very general terms: the applicant must have a legitimate interest in the relief sought. That is only the beginning of the enquiry and may indeed be thought to go without saying. What matters is the examination of the factors that give the applicant a legitimate interest in the relief sought. Those factors have been explored at length in the authorities on sections 303(1) and 168(5) of the IA 1986, as summarised above. Moreover, when Lord Millett came to apply that general principle to the particular case, he did so in a way entirely consistent with those authorities: only those interested in the assets of the company - which meant its creditors, as the company was clearly insolvent - had standing. The contributories would not have had standing to make the application nor did the former auditor, a stranger to the liquidation.

97. Submissions were made to the Court of Appeal in the present case which laid emphasis on Lord Millett's observation that the applicant in *Deloitte & Touche* was not only a stranger to the liquidation but "its interests are adverse to the liquidation and the interests of the creditors". Asplin LJ was, in my view, right at para 82 to reject this as a touchstone for the circumstances in which an application can be made under section 303(1) or section 168(5) of the IA 1986. This may be illustrated by the example of a creditor who challenges acts, omissions or decisions of the trustee or liquidator as they impact on his claim as a creditor. It cannot be doubted that the creditor would have standing under section 303(1) or section 168(5) in those circumstances, but it would be irrelevant whether his challenge was, or was not, adverse to the interests of creditors generally. Indeed, the challenge might be adverse to the interests of all the other creditors. The same would be true of applications by third parties, such as the landlord in *In re Hans Place Ltd*. In many cases, the fact that the application is adverse to the interests of the bankruptcy or liquidation or to the interests of creditors will indicate a lack of standing, but it is not in my view a wholly accurate approach. Insofar

as Males LJ suggested otherwise in *In re Edengate Homes (Butley Hall) Ltd* at para 36, I would respectfully disagree. The issue is whether the challenge is brought by the creditor in its capacity as a creditor, as it was in my view correctly put by Norris J in *In re Zegna III Holdings Inc* [2009] EWHC 2994 (Ch), [2010] BPIR 277 at para 24.

98. Finally, I should note a submission made by Mr Curl on behalf of the Brakes. He submitted that if section 303(1) did not permit applications to be made in circumstances where the trustee has acted in breach of his duties, the misconduct of trustees would go unchecked. This submission ignores that trustees in bankruptcies, like liquidators and administrators, must be authorised to act as such pursuant to Part XIII of the IA 1986, normally by a recognised professional body. The maintenance of proper standards is the responsibility of those bodies, to whom complaints can be made in appropriate cases.

Conclusion

99. The principles underlying the standing of applicants under section 303(1), and section 168(5), of the IA 1986 can be summarised as follows. Creditors have standing where their application concerns their interests as creditors, because the bankrupt's estate or the assets of the company in liquidation are administered under the terms of the statutory trust for their benefit as creditors. Likewise, where there is or there is likely to be a surplus, the bankrupt or contributories are also persons for whose benefit the estate or assets are being administered and they have standing in respect of their interests in the surplus. Beyond that, there is a limited class of cases where creditors, the bankrupt, contributories or others will have standing, but only in respect of matters directly affecting their rights or interests and arising from powers conferred on trustees or liquidators which are peculiar to the statutory bankruptcy or liquidation regime. *Engel v Peri* and *In re Hans Place Ltd* provide good examples of cases within this category.

100. The Brakes do not fall within any of these categories and therefore do not have standing to make the bankruptcy application insofar as it deals with the Trustee's dealings with the Cottage in December 2018 and January 2019. Accordingly, I would allow the appeal.