

## Who wins? – POCA v IA

22 July 2024

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### **A trustee in bankruptcy (T) commenced proceedings under the insolvency legislation against two respondents in respect of a property.**

The first respondent (FR) was the owner of the property. The second respondent (SR) was the bankrupt and was convicted of fraud in September 2018.

In April 2017, the SR was made bankrupt and a restraint order under POCA was made in April 2018.

As the restraint order post-dated the bankruptcy order, any interest the SR had in the property vested in T. However, the restraint order also related to the FR's interest in the property.

T issued proceedings and the FR applied to strike out those proceedings due to the restraint order. T accepted that the restraint order prevented the insolvency courts from making an order, bringing the property back into the bankruptcy estate. It argued that the court could still determine the issues and then stop short of making such an order, unless and until the restraint order was lifted.

The judge examined the authorities and previous case law and found that he could allow T's proceedings to continue as T had suggested. However, the judge concluded that:

“I do think that it cannot be right to proceed with the trial of these matters in the sure knowledge that, as things stand, no order can be made of the kind desired by the trustee, and for all I know it may never be possible to do so. That would be a waste of costs and other scarce resources.”

The judge therefore stayed the two actions brought under the insolvency legislation in respect of the property. It allowed T to proceed with determination of a third issue as to whether the transaction in respect of the property was a sham.

*Taylor v Savik and Ryle* [2024] EW Misc 18 (CC)