

Is my Equity safe? Equity of Exoneration

Equity of Exoneration is a long established doctrine that arises where one joint owner of a property charges the property for their sole benefit.

The long established principles have always been pretty clear. In instances where the first co-owner (**A**) takes out a loan for their own interests, (e.g. to start up or save a failing business) the loan is for the sole benefit of **A** and as such the second co-owner (**B**) is treated like a surety and is presumed to be entitled to be exonerated out of the first owner's share. Therefore if the business ultimately fails and leads to the insolvency of **A**, their creditors or Trustee in Bankruptcy may then be arguing with **B** as to the extent, if any of the husband's share of the equity.

Conversely, where part or all of the funds are used for the joint benefit of both co-owners, it does not do so (to the extent of such part).

These principals have been challenged recently following the case of *Armstrong v Onyearu* whereby the Trustee in Bankruptcy appealed that the equity of exoneration should not apply where there is an indirect benefit to the co-owner (e.g. the loan is for the business of **A** which provided an income to **B**).

The Court of Appeal rejected this argument and the appeal failed. The Court found that such benefit is too intangible to be valued. At the time that the secured loan was taken, neither of the parties could know whether the business would be successful or not.

In reaching its judgement, the Court of Appeal also seized the opportunity to clarify previous rulings on this issue and has helpfully set out the history of equity of exoneration and set out the principles to be applied, which should hopefully assist both co-owners and Trustees/Creditors going forward.

Please note that should your clients require any confidential advice regarding any insolvency matter they are welcome to contact one of our Partners. Initial advice is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedure, please do not hesitate to contact us.