

NEWSFLASH

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s313 CHARGES – DOODES REVERSED

The case of Doodes v Gotham and Fry has now been overturned by the Court of Appeal.

This case, both at first instance and upon appeal, concerns the true construction of s20 of the Limitation Act 1980, which provides.

20(1) No action shall be brought to recover -

- (a) any **principal sum** of money **secured by a mortgage** or other charge on property (whether real or personal) .. after the expiration of **twelve** years from the date on which **the right to receive the money accrued**.

The relevant issue determined by the Court was precisely when “**the right to receive the money** [under a s313 IA 1986 charge] accrued

First Instance

Lindsay J found that the right to receive the monies secured under a s313 charge accrued as at the date of the making of the charge. As a result it was held that a charge holder only has 12 years to enforce an s313 charge, and that this 12 year limitation period commenced to run as from the date of the s313 charge.

The Appeal

The Court of Appeal found that the judge had erred in that the right to receive the money did not accrue on the date when the s313 charge was granted, but when the Trustee obtained an order for sale. So time did not start to run under the Limitation until that later date. Thus the s313 charge was enforceable in this instance, even though it was over 12 years old, as it was held that the standard s313 charge employed in this instance secured only a ‘future obligation’.

General

Trustees should remember that where they are dealing with the realisation of property with charging orders on it, if the charging orders are more than 12 years old they may be unenforceable by the creditor thereby increasing the equity available for the estate – but only if the charge is phrased so as to create an ‘immediate’.