

RECENT DEVELOPMENTS

PROPERTY LAW

WhatsApp messaging, bankruptcy and postponement of sale of the family home

Reid-Roberts v Mei Lin [2026] EWHC 49 (Ch).

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Introduction

In a recent decision of the High Court, *Reid-Roberts v Mei Lin*,¹ Cawson J had to address two points of contemporary importance in the context of the sale of the family home following a marriage breakdown and the bankruptcy of a husband. The first revolved around the ever-increasing use of encrypted and digital messaging and the frequently asked question before the courts on the legal effect, if any, of messages in the form of a WhatsApp as well as communications and negotiations which have taken place through email exchanges. The second point related to the exercise of the courts power to order sale of the family home following a breakdown in the relationship between the co-owners and the extent to which that sale can be postponed by a court under exceptional circumstances. Both these areas of law have attracted significant judicial and academic commentary over the years. This article analyses the decision of the High Court and assesses its implications and refinement of the existing principles of law.

The facts in *Reid-Roberts v Mei Lin*

The facts involved a complicated marriage breakdown and a subsequent divorce proceeding between Mr Gudmundsson and Ms Lin. The family home was purchased in 2009, and the title was held as beneficial joint tenants. The couple had two children, and Mr Gudmundsson ran a mezzanine finance business. Mr Gudmundsson became addicted to drugs which changed his personality and became overly aggressive towards Ms Lin thus having significant impact on her and their children living in the family home. Their relationship deteriorated to the extent that there was a complete breakdown around 2016 whereupon they separated, and Ms Lin remained in the family home with her two children. In 2018 divorce proceedings under the Matrimonial Causes Act 1973 were commenced by both parties. Whilst these proceedings were taking place, and before a conclusion was reached by the Family Court, both Mr Gudmundsson and Ms Lin exchanged WhatsApp and email exchanges in which they communicated their intentions in respect of the family home and the welfare of the children. It is not intended to rehearse all of these communications here but save to say that discussions took place through messages and emails as to the future intentions of the parties both in respect of the family home and the custody of the children. One such WhatsApp message included the following communication from Mr Gudmundsson to Ms Lin:

“I suggest that the responsibility of taking care of the kids goes to u 100%, then I can sign over my share of southcote road to u without any complications as I don’t need any accommodation in London.” And followed by “Please let me know that u r happy with this and we can then close the financial part of the divorce this week.”

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¹ [2026] EWHC 49 (Ch).

A further message was in the form of an email which states ‘why don’t you just keep the house in London, and the kids move with me to Iceland.’

A week before the Family Court had delivered the outcome of the divorce proceedings, Mr Gudmundsson had been declared bankrupt and bankruptcy proceedings commenced with the appointment of a trustee in bankruptcy. The Family Court and neither Ms Lin knew that bankruptcy proceedings had begun and, that a week before the family court hearing Mr Gudmundsson had been declared bankrupt. The Family Court ordered that the full ownership of the family home be vested in Ms Lin. This order was made by taking into account all the facts including the conduct of Mr Gudmundsson. The trustees in bankruptcy commenced proceedings in the Insolvency and Companies Court in order to secure vacant possession of the family home where Ms Lin was residing with her children. The Deputy Judge, Frith J, declared that Ms Lin and the trustees each held a 50 per cent interest in the family home and that vacant possession be delivered to the trustees on 1 August 2032 whereupon the trustees would exercise their power to sell the family home pursuant to the power of sale contained in s.14 of the Trusts of Land and Appointment of Trustees Act 1996. Both the trustees in bankruptcy and Ms Lin appealed to the High Court.

In the appeal before the High Court, the trustees argued that the Deputy Judge had erred in finding that there were exceptional circumstances in favour of Ms Lin for the purposes of s.335 of the Insolvency Act 1986 which allowed the court to order a delay of sale of the family home until August 2032. Ms Lin cross appealed on the grounds that the Deputy Judge was wrong to find that the Trustees had a 50 per cent interest in the family home as she had evidence that her former husband Mr Gudmundsson had divested himself of any interest in the home by messages to that effect.

Effects of messaging, intent and authentication

These cases have primarily been in the context where the negotiations between the parties require some compliance with statutory formalities such as those found in sections of the Law of Property Act 1925 and The Law of Property (Miscellaneous Provisions) Act 1989 to name a couple. These sections not only require certain creation and dispositions of interests in property to be in writing, but they require proof of signing or actual signing before the actual creation and disposition can take effect.

In recent times the courts have been asked to deliberate over questions about the legality and effect of messages in the form of WhatsApp and email exchanges. There is now a growing body of law which seeks to explain the circumstances in which such messages and communications will have legal effect. In *Reid-Roberts v Mei Lin*, the question before the court was whether the cumulative effect of WhatsApp messages and emails had the effect of divesting Mr Gudmundsson of his beneficial interest in the family which he once shared with his former wife Ms Lin. In the High Court, Cawson J, after looking at the specific facts before him and also reviewing a series of cases where the issue of such messages was considered, held that in the present case the WhatsApp messages and the emails did not have the effect of divesting Mr Gudmundsson of his beneficial interest in the family home as required by the statutory formalities contained in s.53 (1) of the Law of Property Act 1925.

Section 53(1)(a) of the Law of Property Act 1925 provides that no interest in land can be created or disposed of except by writing signed by the person creating or disposing of such an interest. Section 53(1)(c) further provides that a disposition of an equitable interest must be in writing and signed by the person disposing of such. With respect to Mr Gudmundsson’s WhatsApp messages and his email exchanges, these could not be seen to have met the requirements of s.53 of the 1925 Act for several reasons. In the first place, the messages exchanged between Mr Gudmundsson and Ms Lin were not deemed to have the effect of an immediate release of Mr Gudmundsson’s interest in his property. At best these were pre divorces negotiations which may have indicated their intentions but only to be finalised by an order of the Family Court. Cawson J made reference

to the decision in *Xydhias v Xydhias*,² where the court held that even where parties to a divorce proceeding may attempt to negotiate any issues regarding matters such as ownership and the rights and welfare of children, these negotiations are not conclusive, and any such agreements reached only become binding once they have been approved by the Family Court. Furthermore, reliance was placed on the decision of the Court of Appeal in *Soulsbury v Soulsbury*,³ where the Court of Appeal made a distinction between a negotiation which had the effect of an immediate disposition of property and an agreement to dispose of the same in the future. Only an agreement that had the effect of an intention to immediately dispose of an interest could be caught by the provisions of s.53 of the Law of Property Act 1925, and even then, there would be a need for a requisite signature disposing of the same.

In respect of signature and authentication of a message Cawson J referred to the decision in *Hudson v Hathway*,⁴ where the Court of Appeal was faced with a question as to the effect of an email exchanged between a non-married couple who had separated some time ago. In the email, one former partner expressly stated that they wished to have no interest in the shared property with immediate effect. This email was taken as an immediate release of his interest. Cawson J explained that this was quite different from the present situation where the Mr Gudmundsson and Ms Lin were preparing for a divorce hearing and the matter was to be agreed by the judge in the Family Court.

Even where a message, whether it be in the form of a WhatsApp or an email, there does remain the more critical question about the requisite signature required to invoke s.53(1) of the LPA 1925. After reviewing a line of authorities on what actually constitutes a signature for the purposes of the formality requirement in s.53 of the LPA 1925, Cawson J explained that what was needed was some authentication that the sender intended the message and that message was intended to be sent by him or her. In doing so, the sender's signature was giving effect and recognition to what was being conveyed in the message by the sender.⁵ Normally, in the case of an email, an email address with the sender's name will automatically appear at the top of the email header. The same is true when a WhatsApp message is sent, where the name and in some cases a picture identity of the sender will appear. Cawson J explained that the mere appearance of the email address or header of a WhatsApp was insufficient to authenticate the message for the purposes of a signature. What was needed was an actual signing of by the sender to authenticate the message.

Sale and postponement of sale under s. 335 Insolvency Act 1986.

It is trite law that s.14 of the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA) confers upon the court to order a sale of land in circumstances where there is a dispute between the co-owners of the land. The section is invariably used in order to sell, for example, the family home in circumstances where there is a breakdown in the relationship between married and non-married cohabitants. In circumstances where one of the co-owners is declared bankrupt and the application is made by the trustees in bankruptcy of the bankrupt co-owner, there is a further requirement before an order for sale can be made. The order for sale has to be made to the bankruptcy court under s.335(A). In the exercise of its power to order a sale, the court is required to balance the interests of the creditors on the one hand and the family of the bankrupt on the other hand. Section 335(A)(2) list the following factors which the court must take into consideration in order to arrive at a just and reasonable decision:

“... the court shall make such order as it thinks just and reasonable having regard to:

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² [1999] 1 All ER 386.

³ [2008] Fam 1.

⁴ [2023] KB 345.

⁵ See, for example, *J Pereira Fernandes SA v Mehta* [2006] 1 WLR 1543.

- (a). The interests of the bankrupt's creditors.
- (b). where the application is made in respect of land which includes a dwelling house which is or has been the home of the bankrupt or the bankrupt's spouse or civil partner or former spouse or civil partner –
 - (i) the conduct of the spouse, civil partner, former spouse, or former civil partner, as far as contributing to the bankruptcy.
 - (ii) the needs and financial resources of the spouse, civil partner, former spouse, or former civil partner; and
 - (iii) the needs of any children; and
- (c) all the circumstances of the case other than the needs of the bankrupt.”

Section 335(A) is further qualified by subsection 335(A)(3) which provides that “where such an application is made after the end of the period of one year beginning with the first vesting of the bankrupt's estate in a trustee, the court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.”

Exceptional circumstances and the role of an appellate court

In *Reid-Roberts v Mei Lin*⁶ the Deputy Judge, Frith J, held that in the exercise of the power of sale at the request of the trustees in bankruptcy, and taking on board the full ambit of S.335(A) of the Insolvency Act 1986, there were exceptional circumstances operating in favour of Ms Lin and her children to the extent that the sale of the disputed family home was postponed by 8 years to 2032. The trustees cross appeal in the High Court was on the grounds that the Deputy Judge had erred finding that there were exceptional circumstances postponing the sale of the family home for a period of eight years.

Once a bankruptcy court has made a judgment in postponing sale on grounds of exceptional circumstances, the grounds upon which an appellate court can interfere with the decision of the bankruptcy court is very limited.⁷ It is also very clear from the caselaw that on appeal, the appellate courts are not to carry out a re-assessment of the factors that are, for example in the case of *Reid-Roberts v Mei Lin*, contained in s.335(A)(3) of the Insolvency Act 1986. There is no room for a re-trial, rather the role of the appellate court is to establish what may be described as a judicial review of the decision of the bankruptcy court. The matter is no better explained than by the words of McCombe, Leggatt and Rose LJ in *Re Spiritroom Ltd*,⁸ where they explained commented that “the appeal court does not carry out a balancing task afresh but must ask whether the decision of the judge was wrong by reason of some identifiable flaw in the judge's treatment of the question to be decided, “such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion”.⁹

It is, therefore, clear that the only grounds for an appellate court to interfere with the decision of an earlier court is confined to situations where the earlier court made an error in law. In terms of what constitutes errors of law, this was articulated by Saini J in *Azam v University Hospital Birmingham NHS Foundation Trust*¹⁰. The learned judge explained that there were five types of errors that a lower court could have made giving rise for an appellate court to intervene. These were a misdirection of law; some procedural unfairness or irregularity; the judge considered irrelevant matters, the judge failed to consider relevant factors and finally that the judge had

⁶ [2026] EWHC 49 (Ch).

⁷ See, for example, *Cloughton v Charalambous* [1998 BPIR 558 at 562 per Jonathon Parker J.

⁸ [2019] EWCA Civ 932.

⁹ [2019] EWCA Civ 932 at para. 76.

¹⁰ [2020] EWHC 3384 QB.

simply made the wrong decision. An example of the final one being where the decision of the judge was simply too generous as it was claimed to be by the trustees in *Reid-Roberts v Mei Lin*.

What amounts to exceptional circumstances under s.335(A)(3) Insolvency Act 1986?

It is a natural consequence of marital breakdown that all parties to the marriage, including any children, will often endure an extended period of hardship and uncertainty before there is a complete settlement. The matter can be further exacerbated where one of the parties is declared bankrupt and the trustees in bankruptcy commence proceedings to realise the assets of the bankrupt party which will generally be seen as being paramount to other claims of the family unless there are exceptional circumstances. The mere fact that a wife and her children may have to face a sale and relocate to another property is not in itself sufficient to amount to exceptional circumstances. There is a growing body of law around the question of what amounts to exceptional circumstances. It is not intended to rehearse all of the caselaw which has been decided under the former s.30 of the Law of Property Act 1925 and s.14 of the Trusts of Land and Appointment of Trustees Act 1996. In *Re Citro*¹¹, regarded as one of the seminal cases in bankruptcy proceedings, Nourse LJ explained that ‘as the cases show, it is not uncommon for a wife with young children to be faced with eviction in circumstances where the realisation of her beneficial interest will not produce enough to buy a comparable home in the same neighbourhood, or indeed elsewhere; and, if she has to move elsewhere, there may be problems over schooling and so forth.

Such circumstances, while engendering a natural sympathy in all who hear of them, cannot be described as exceptional. They are the melancholy consequences of debt and improvidence with which every civilised society has been familiar. It was only in *Re Holliday* that they helped the wife’s voice to prevail; and then only, as I believe, because of one special feature of that case.’¹² Similarly in *Grant v Baker*¹³ the court made it clear that even where there exceptional circumstances, it was important and necessary for the court to have regard to right of the creditors of the bankrupt and only in truly exceptional circumstances could the rights of those creditors give way to an excessive delay in the sale of the bankrupt’s share in the family home.

Exceptional circumstances were found in the decision in *Re Holliday*,¹⁴ a case decided under the old provision of s.30 of the Law of Property Act 1925. Here a wife’s and her children’s interest outweighed the interests of the creditors when a bankrupt husband has left his wife to defend for herself and her children. The husband had moved out of the former family home and settled with another woman. The actual monies owned by the husband were relatively low and Buckley LJ took the view that the wife and the children were relatively young and at school, should not be displaced. In relation to an order for sale in the context of bankruptcy, Lawrence Collins J in *Dean v Stout*¹⁵ summarised the principles to be applied when considering the operation of s.335(A)(3). His Lordship explained that “the presence of exceptional circumstances is a necessary condition to displace the presumption that the interests of the creditors outweigh all other considerations, but the presence of exceptional circumstances does not debar the court from making an order for sale.

Typically, the exceptional circumstances in the modern cases relate to the personal circumstances of one of the joint owners, such as a medical or mental condition... The categories of exceptional circumstances are not to be categorised or defined and the court makes a value judgment after looking at all the circumstances... It is not uncommon for a wife with children to be faced with eviction in circumstances where the realisation of her beneficial interest will not produce enough

¹¹ [1991] Ch 142.

¹² [1991] Ch 142

¹³ [2016] EWHC 1782 (Ch).

¹⁴ [1981] Ch 405.

¹⁵ [2004] EWHC 3315.

to buy a comparable home in the same neighbourhood or, indeed, elsewhere. Such circumstances, while engendering a natural sympathy, cannot be described as exceptional.’¹⁶

Exceptional circumstances in *Reid-Roberts v Mei Lin*?

In the bankruptcy court, the Deputy Judge Frith J held that there were indeed exceptional circumstances in favour of Ms Lin and her children. In respect of the creditors of Mr Gudmundsson, the learned judge explained that the extent of Mr Gudmundsson’s debt was not clear for several reasons. Some of the debt had been caused by a dishonest solicitor acting for Mr Gudmundsson and in that respect, the creditors had a potential claim against the solicitor for dishonest assistance. Furthermore, there was a potential claim against insurances that the creditors could benefit from although whether those would be successful was another matter. The learned judge also took into consideration the conduct of Mr Gudmundsson in not informing the Family Court and neither Ms Lin about the bankruptcy proceedings against him. Frith J took the view that had Ms Lin have known that there was service of bankruptcy against her former husband, she would have expedited matters to resolve the ownership of the family home much earlier.

Frith J made took further consideration of the mental health of Ms Lin and her son. The learned judge regarded these mental health conditions as not being the normal consequences of having to sell the family home as a result of the breakdown of the marriage and the subsequent bankruptcy of the husband. They were, in the opinion of the learned judge, exceptional circumstances. Ms Lin was diagnosed with PTSD and her son with ADHD. This principally brought on by the aggressive behaviour of Mr Gudmundsson over a considerable time when they were married and lived together. Frith J paying significant attention to this mental stress that had been put upon Ms Lin and her children. Frith J held that although it was clear that the sad consequence of debt and subsequent displacement from the family home was not exceptional, the case before him was different. Mr Gudmundsson’s behaviour and treatment of his wife could not be regarded as a normal consequence of his bankruptcy and subsequent debt.

Cawson J in delivering his judgement in the High Court disagreed with the findings of Frith J in the bankruptcy court. His Lordship explained that although Ms Lin and her children had exceptional circumstances operating in their favour for the purposes of s.335(A)(3) of the Insolvency Act 1986, the postponement of sale was far too long. The postponement of the sale for a period of 8 years was incorrect and should only have been postponed for 1 year. In coming to this conclusion, Cawson J explained that the Deputy Judge had erred on a number of points which gave the court grounds upon which to overturn the decision. In the first place, there was insufficient evidence relating to Ms Lin’s mental health. Cawson J explained that there were ‘some errors in the Deputy Judge’s approach to the misconduct on the part of Mr Gudmundsson, and whilst there are deficiencies in the evidence as to the state of Ms Lin and her son’ mental health, I have come to the conclusion that the Deputy Judge’s overall evaluation that there are, in the present case, exceptional circumstances is one that he was entitled to come to.’¹⁷

Cawson J explained that the costs of bankruptcy had already increased significantly and the fact that Ms Lin would have to displace was not significant. The Deputy Judge had paid significance to the fact that the creditors were to receive a windfall at the expense of Ms Lin, however, Cawson J explained that the interests and windfall to the creditors should not be factor taken into consideration. His Lordship explained at ‘I consider it a further fair criticism of the Deputy Judge’s approach that he did not give any real consideration to the alternatives that might be available to Ms Lin. It is correct that he did identify that Ms Lin would stand to receive a not insignificant amount out of the proceeds of sale of the Property, albeit diminished by various liabilities or costs. Further, he did identify the fact that any substitute property would have to be smaller, and not within the same vicinity with the implications for schooling etc. However, no

¹⁶ [2004] EWHC 3315 at para 5-11.

¹⁷ [2026] EWHC 49 (Ch) at para.163.

real consideration appears to be given to finding a rental property, which could be smaller than the Property given that the latter is large enough to house lodgers, and to do so within the more immediate locality.’¹⁸

Conclusions

The decision of the High Court in *Reid-Roberts* continues to build on an important line of authorities in the context of WhatsApp and email exchanges in legal negotiations as well as the cases on what constitutes exceptional circumstances in the context of a postponement of the sale of the family home under s.335(A)(3) Insolvency Act 1986.

In respect of WhatsApp and email messaging, the mere presence of an email address or a WhatsApp identity is insufficient to amount to a signature for the purposes of statutory provision such as those found in s.53(1) LPA. What is needed is an actual signature or “signing off” of the message in order to authenticate the message. In the present case before the High Court held there had been no such authentication and Ms Lin’s argument that her former husband Mr Gudmundsson had divested himself of his interest in the former family home was rejected. Given technological advances and the use messages through mobile devices, the courts will continue to be asked the question as to the legal effect of such mobile communications. The law is developing with technological advances and is now recognising that such messages can have legal effect where the intention is that the parties intended them to be so. However, the key question is one of authentication and that will require something more than the automated email address of the sender or in the case of a WhatsApp message, the name and identity of the sender.

As far as the operation of s.335(A)(3) of the Insolvency Act 1986, and the grounds for a court to postpone sale of co-owned following a dispute between the co-owners where there are exceptional circumstances, the decision illustrates the very high threshold of evidence that is required before the court can postpone sale and the duration of that postponement. The decision in *Reid-Roberts v Mei* is yet another clear affirmation that, although the courts will take into consideration exceptional circumstances, those exceptional circumstances will not allow an extensive delay in the sale of disputed property.

¹⁸ [2026] EWHC 49 (Ch) at para.163.