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Cases Alerter

At-a-glance case summaries provided by **Wendy Parker** and **Phillip Patterson** of **Gatehouse Chambers**

Mark Guy Boughey, Michael Ian Field v Toogood International Transport and Agricultural Services Ltd (In Administration) [2024] EWHC 1425 (Ch)

Facts

The case concerned an application for an extension of the administrator's term in office for a period of two years. The company was incorporated in 2006 and for many years carried on the business of an independent express transport and haulage company. However, following Brexit and the COVID-19 pandemic, its business shrunk whilst its costs increased, resulting in the company being unable to pay its debts as they fell due. The directors of the company obtained insolvency advice and the administrators were appointed on 21 June 2022 by those directors. The purpose of the administration was to realise properties in order to make a distribution to one or more secured or preferential creditors, under para 3(1)(c) of Sch B1 to the Insolvency Act 1986 (IA 1986).

Prior to the appointment, notice to all of the creditors who held an unsatisfied 'qualifying floating charge' (and were thus entitled to appoint administrators under para 14 of the schedule) of intention to appoint administrators was served under para 26 of the schedule.

The administrators had issued a number of progress reports covering periods of approximately six months each from June 2022 to December 2033. The company has approximately 565 unsecured creditors with debts totalling about £1.9m. Key steps taken by the administrators included obtaining a sworn statement of affairs from the directors of the company, and asset realisations.

Under para 76 of Sch B1, IA 1986, the original appointment of the administrators would have come to an end after one year (ie in June 2023) unless the term was extended by consent for not more than one year, or by order of the court for a specified period. 'Consent' for this purpose would in the circumstances of this case be the consent of '*(a) each secured creditor of the company*' and of '*(b) the unsecured creditors of the company*', under para 78(1)of the schedule. The administrators decided to seek such consent, on the basis that there was further work to be done before the company could exit administration. The administrators sought to achieve this extension by way of the consent route provided for in the legislation. The consent procedure is (partly) set out in r 3.54 of the Insolvency Rules 2016.

In considering whose consent should be obtained to the extension of the administration, the administrators took the view that, so far as concerns secured creditors of the company, the consent of HSBC UK Bank plc alone was necessary, for only that creditor had any economic interest in the administration. As far as the unsecured creditors were concerned, the administrators' position was that their consent was deemed to have been given under s 246ZF, IA 1986, because appropriate notice was given to them and no objections or requests for a physical meeting were received.

Held

The judge reviewed the authorities and concluded that the most weight in creditors' decisions in administration should be given to the creditors with a real economic interest in the outcome. In addition, he referred to the decision of ICC Judge Prentis in *Re Pindar Scarborough Ltd (in administration)* [2024] EWHC 908 (Ch) and concluded that only those who have an economic interest in the outcome should be concerned to make decisions about the continuance of the administration.

The evidence established that there were still a number of important things to do within the administration. These included continued investigation into and recovery of the directors' loan accounts and inter-company loans. preferential creditors of the company. The judge was satisfied that the extension should be granted.

The decision makes it clear that any application for an extension should be supported by cogent evidence which explained the component parts of the processes to be undertaken, and an analysis of the recovery of assets and realisations. The court will then consider alternative procedures. Because the company was unable to pay its debts within s 123 IA 1986, the administration cannot come to an end without an insolvency procedure. Dissolution without realising assets is not in the creditors' interest. The alternatives to an extension are therefore creditors' voluntary or compulsory liquidation. Either kind of liquidation will, however, incur significant further costs, and the appointment of different persons as liquidators still more. The administrators must put forward evidence that the purposes of the administration can still be met and will result in a better result for the creditors than if the company were put into liquidation.

Khera v Palladian Capital Ltd and another [2024] EWHC 1009 (Ch)

Facts

Chetan Khera ('Chetan') presented a winding up petition against two companies, 'Capital' and 'Penfold'. Penfold was a deadlocked company. Chetan and his cousin, Dara were the sole and equal directors and shareholders of Penfold. Prior to 3 November 2021,

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Chetan and Dara were the only directors of Capital. On 3 November 2021, Chetan resigned, leaving Dara as the sole director of Capital. Chetan also owned 50% of the shares of Capital prior to 4 January 2021 when he transferred those shares to a company owned and controlled by Dara. Chetan petitioned to wind up Penfold on the basis of a debt of £237,070.80 and Capital on the basis of a debt of £612,162.19, both said to arise as a result of director's loan accounts. Capital opposed the petition on the basis that the debt due to Chetan had been assigned to Dara. Penfold was said to have a cross claim in the form of a derivative claim against Chetan.

Held

The court made a compulsory winding up order against both Capital and Penfold. In relation to Capital, the court concluded that there was no genuine and substantial dispute in respect of the debt claimed, having scrutinised the relevant documentary evidence.

As to Penfold, it was common ground that the company was very heavily insolvent and thoroughly deadlocked. It did not trade as at the date of the hearing and was not expected to trade. The court observed that the derivative claim purportedly identified by way of cross claim was logical and coherent. However, the court concluded that it was not a claim of real substance, genuinely asserted for an amount more than the admitted debt owed to Chetan. It was said to have all the hallmarks of an argument belatedly constructed in order to avoid the otherwise inevitable outcome of a compulsory winding up. Counsel for Chetan submitted, and the court accepted in principle, that in some circumstances a winding up order could be made despite the existence of a substantial dispute. The court did not need to determine the petitions on this basis, however. Given the substantial insolvency of Penfold and its deadlock, the court noted that liquidation was the proper course for this company and one which Chetan sought for proper reasons .

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Cases Alerter

At-a-glance case summaries provided by **Toby Frost** of **All England Reporter**

Hyde and another (in their capacity as joint liquidators of Radarbeam Ltd, a company in liquidation) v Todd [2024] EWHC 1423 (Ch)

Facts

The appellants were the joint liquidators of Radarbeam Ltd ('the Company'). The respondent was the sole director of the Company, from its original incorporation. The respondent and his wife (HT) were the owners of the shares in the Company.

The Company was incorporated in May 2002.

In June 2006, the Revenue and Customs Commissioners (the Revenue) denied VAT returns for three accounting periods (the denied returns).

The Company appealed against the Revenue's decision to deny the deduction of input tax in relation to the denied returns. The appeal was made to the First-tier Tribunal Tax Chamber ('the FTT'). In September 2010, the FTT dismissed the appeal. Amongst other things, the FTT found that the Company had had actual knowledge of a fraud in the relevant supply chains in relation to transactions in all three accounting periods and that the respondent had been aware of the relevant fraud.

The Company went into administration in April 2014, and was subsequently placed into creditors' voluntary liquidation in December 2014. The appellants commenced proceedings against the respondent under s 214 of the Insolvency Act 1986 (IA 1986). In November 2022, the judge dismissed the application of the appellants for summary judgment on their claim. The appellants appealed.

Issues and decisions

Whether the judge had erred in law or in the exercise of his discretion, in overlooking or alternatively giving insufficient weight to the findings in the FTT decision and to the fact that the respondent had previously accepted the findings of the FTT in respect of his knowledge of fraud and the Company's connection to the fraud. Also, whether the judge had been wrong in law to find that the FTT decision was not binding on the basis that the findings in the FTT decision and the respondent's acceptance of