IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURT
OF ENGLAND & WALES
INSOLVENCY AND COMPANIES LIST
[2018] EWHC 2518 (Ch)

No. BR-2018-000528

Rolls Building

Wednesday, 1 August 2018

Before:

INSOLVENCY AND COMPANIES COURT JUDGE BRIGGS (CHIEF REGISTRAR)

B E T W E E N :

IAIN PAUL BARKER — Petitioner/Applicant

- and -

PAUL BAXENDALE-WALKER — The Bankrupt/Respondent

MR J. BAILEY (instructed by Farrer & Co LLP) appeared on behalf of the Petitioner/Applicant.

MR C. BROOKMAN (instructed by HMRC) appeared on behalf of HMRC.

MISS C. ADDY QC (instructed by Griffin Law Solicitors) appeared on behalf of the Interested Parties.

MR S. HACKETT (instructed by Norton Rose Fulbright LLP) appeared on behalf of the Bankrupt/Respondent.

EXTEMPORE J U D G M E N T APPROVED

ICC JUDGE BRIGGS (Chief Registrar):

Approved

1 The applicant, Mr Paul Barker seeks an order pursuant to section 375(1) of the Insolvency Act 1986 to vary the bankruptcy order made on 11 July 2018 to appoint Mr Leeds and Mr Hellard as joint trustees in bankruptcy of Mr Baxendale-Walker. The order of 11 July 2018 was silent as to such an appointment. Pursuant to section 291A of the Insolvency Act 1986 the Official Receiver was appointed trustee in bankruptcy on the adjudication of Mr Baxendale-Walker's bankruptcy.

2 Mr Barker petitioned for the bankruptcy of Mr Baxendale-Walker having obtained a judgment debt on 29 January 2018 in the sum of £16,670,313.09. A statutory demand was then subsequently served and not set aside. At around the same time, HMRC served a demand in the sum of £650,000 odd. The petition for bankruptcy was presented on 29 March 2018 on an expedited basis and came before the High Court on 4 April 2018 to determine, first, whether interim receivers should be appointed. In the meantime, Mr Baxendale-Walker sought permission to appeal the January judgment debt but the Court of Appeal refused permission. He did not seek a stay of execution, however he made an application for permission to appeal to the Supreme Court. Mr Barker at the time submitted that unless interim receivers were appointed there was a real risk that the debtor's assets would be diminished or dissipated before a bankruptcy order could be made. It was for Mr Barker to make good that submission.

3 In the course of the application to appoint interim receivers the court was taken to a considerable number of documents in relation to Mr Baxendale Walker's litigation history demonstrating that he had been subjected to at least three sets of proceedings before the solicitor's disciplinary tribunal, leading to a restriction being placed on his practising certificate in 2004, and suspension in 2005. The suspension was serious extending for a period of three years. He had been found to have knowingly assisted in breaches of trust

following the distribution of pension fund monies which were paid into his client account. On appeal the Court remarked that Mr Baxendale-Walker's behaviour was lamentable because of an absence of candour. In 2007 the tribunal found that Mr Baxendale Walker had received sums via a trust and that his conduct before the Law Society was deplorable. He was later struck off the roll. Mr Baxendale-Walker litigated to such an extent that a civil restraint order was made against him.

4 His appetite for litigation can be seen from the judgment of Lord Justice Pitchford in *Bluebird Productions Limited v Natasha Eustace* [2015] EWCA Civ 423. Mr Baxendale-Walker is also known as Paul Chaplin, was formally a barrister and a solicitor specialising in tax law. From about 2005 he became involved in the pornographic video industry and met Ms Eustice with whom he had a relationship. After the relationship came to an end Mr Baxendale-Walker, using a number of corporate entities, commenced a series of actions against Ms Eustace and her parents. Lord Justice Pitchford, agreeing with the judge of a lower court that Mr Baxendale-Walker had used court proceedings abusively, commented: "There was a multiplicity of proceedings by a bewildering range of claimants, on the face of it manipulated by Mr Baxendale-Walker so as to generate substantial costs that the unsuccessful applicants had not intention of paying." As to the abuse he commented: "However, in my view what is improper is the use of the court's process for ulterior and illegitimate motives. The judge found that Mr Baxendale-Walker was in pursuit of his personal interests to do with the relationship that had formerly existed between himself and Ms Eustace, bringing proceedings against her through what was effectively a multiplicity of nominees with the intention of ensuring that even if she was successful in her defence, she would nevertheless be ruined. His principal strategy was to use litigation as intimidation….As soon as the defendant put out one fire, another one appeared." In his witness statement dated 30 July 2018, Mr Longworth of Farrer & Co refers to other examples of Mr Baxendale-Walker abusing the court process through corporate vehicles.

5 Given the amount of evidence that was before the court on 16 April 2018 in respect of the application for the appointment of interim receivers, and given the submissions made by leading counsel on behalf of Mr Baxendale-Walker I determined that interim receivers should be appointed. I found firstly, that his assets could be diminished if he abused the process of litigation as he had in the past, and secondly that his disclosure at the hearing was far from satisfactory. He claimed that he had no assets other than a small stipend, but in fact the documentation disclosed that he is a director and shareholder of two companies which held shareholder funds of over £2 million.

6 As to his claim about lack of resources the Court was struck by three companies willing to financially assist Mr Baxendale-Walker, including his own remuneration trust, EW LLP, Minerva Ltd, Hawk, Brunswick Wealth and Burleigh House PTC Ltd. Admissions of his hidden assets and tenacious approach to litigation, where the prospects are hopeless, were made by a friend and a close associate of Mr Baxendale-Walker, Susan Glover, who gave evidence that he was able to disguise his assets so that he looked poor on paper because he was able to hide his wealth. She said:

> "Again I can verify this by a lawyer in Reading who is a pal of mine and has acted on numerous overseas entities who have had legal ownership of cars, properties and other assets which are not specifically owned by Paul. People have tried unsuccessfully to claim that Paul did own them. If he loses he will happily let you make him personally bankrupt. He has nothing in his name. He intends to pursue claims against you in the States and also to use other entities to recover proceeds of sale from you based on his usual conduct of litigation. I would also predict that he would also use any inconsistencies in court documents that are ever filed to bring

> prosecutions for contempt, perjury and God knows what. I swear to you on the lives of Tom and Freya [those are the children of Susan] that this is not about me helping Paul. He does not care. He enjoys a fight and his assets are protected to the hilt."

7 Ms Glover's comment as to his "usual conduct of litigation" I infer, is a reference to how he conducted litigation against Ms Eustace described by Lord Justice Pitchford. I said in my judgment at the time that the evidence suggested that Ms Glover knew or may have known or had heard from Mr Baxendale-Walker or a close associate, but more likely Mr Baxendale-Walker owing to their special relationship, that he had assets but was seeking to protect them by hiding them in different jurisdiction and behind different legal devices such as trust instruments.

8 When the matter came back before the court on 7 June 2018, for the final hearing of the petition I gave a 28 day period of grace for Mr Baxendale-Walker to either seek a stay from the Court of Appeal or obtain permission to appeal from the Supreme Court. At the expiry of the 28 day period of grace, I drafted my judgment and handed it down on 11 July 2018 when the bankruptcy order was made. I was told that there was a discussion on that day about the appointment of the interim receivers as trustees for the purpose of administering the estate of Mr Baxendale-Walker. There was no doubt that having gained knowledge from the experience of investigating the affairs of Mr Baxendale-Walker between the date of their appointment and 11 July 2018 that their appointment would have been wholly proportionate and efficient. There was a reasonable prospect that any knowledge that they had gained would enhance the prospects of early recoveries. I was informed that the Official Receiver had agreed to seek a Secretary of State appointment pursuant to s.296 of the 1986 Act to permit the appointment of Mr Leeds and Mr Hellard and as a result there was no need to consider their appointment further. This seemed the sensible solution.

9 Due to an unfortunate set of circumstances, Mr Hellard and Mr Leeds were not appointed pursuant to s.296 of the Insolvency Act 1986. In his witness statement Mr Longworth explains:

"The Official Receiver was appointed trustee of the Bankrupt's estate by virtue of the Bankruptcy Order by operation of IA s.291A(1). The Court will recall that at the hearing on 11 July 2018 at which the Bankruptcy Order was made ("the 11 July Hearing") the appointment of Messrs Leeds and Hellard as trustees of the Bankrupt's estate was discussed. Mr Barker's counsel told the Court that Grant Thornton had made enquiries of the Official Receiver's office and had been assured that upon the making of the Bankruptcy Order the Official Receiver would appoint Messrs Leeds and Hellard as trustees of the Bankrupt's estate pursuant to IA s.296 ("a Secretary of State Appointment"). In the event, the Official Receiver has declined to make a Secretary of State Appointment. I summarise the communications between the Official Receiver and Farrers, Norton Rose Fulbright and HMRC below for completeness. For the purposes of this application the point is that if Mr Barker had known before the making of the Bankruptcy Order that the Official Receiver was not going to make a Secretary of State Appointment he would have sought an order at the 11 July Hearing (pursuant to either IA s.363 or the court's inherent jurisdiction) appointing Messrs Leeds and Hellard as trustees in bankruptcy. Mr Barker was therefore denied the opportunity to make such an application because of the assurance he had received, via Grant Thornton, from the Official Receiver. That situation is unfortunate. However, Mr Barker has no desire to criticise the Official Receiver. He is less concerned about how the situation arose than by the simple fact that he was denied the opportunity to make an application he would otherwise have made because of a mistaken belief about what the Official Receiver would do. In circumstances where the Official Receiver does not

intend to make a Secretary of State Appointment Mr Barker feels he has no option but to make the present application".

10 The correspondence demonstrates the willingness of the Official Receiver to meet with the legal team of Mr Barker and entertain the idea of a Secretary of State appointment. On 17 July 2018 Mr Gould of the Official Receiver's office confirmed to Mr Longworth that he would meet on 24 July. A meeting also took place between HMRC and Mr Gould. HMRC urged the Official Receiver to make Secretary of State appointment. I understand from the evidence that HMRC had a further meeting with the Official Receiver a day or two later on 26 July. It seems that no decision was made on 24 July so Mr Longworth wrote a detailed letter on 25 July setting out the relevant facts and then spoke to Mr Gould on 27 July about whether a decision had been made and was informed that no Secretary of State appointment would be made at that stage. Mr Gould then wrote on the same day to say that the Official Receiver had no objections in principle to being removed through the mechanism of a review of the order made on 11 July 2018. It is due to the correspondence and meetings that this application was not made sooner.

11 Mr Barker, relying on the statement of the Official Receiver, was, therefore, denied, according to Mr Bailey, an opportunity to make the application for an immediate appointment of the interim receivers as joint trustees-in-bankruptcy. The Official Receiver has written to the court explaining that he is neutral as to being removed and replaced by Mr Hellard and Mr Leeds today. After the short adjournment and prior to delivering this judgment further correspondence has been received from the Official Receiver. I shall turn to that correspondence presently.

12 Mr Bailey argues that the other creditors appearing today have no grounds to oppose the appointment as they do not appear on behalf of the Official Receiver, have not complained about the conduct of the interim receivers and as Mr Longworth explains in his witness

evidence their appointment will not prejudice any creditors and may well save creditors' costs and time. "We point out," he says, "that any appointed trustees in bankruptcy are under the control of the court and that any creditor may make applications as and when necessary if they believe that a decision taken by the trustee in bankruptcy has made an error."

13 Mr Bailey for Mr Barker says that an appointment should be made today because nothing has changed in relation to the risk of dissipating the assets and, further, it would be completely proportionate bearing in mind the proposed trustees' previous knowledge of the matter. He raises an issue which is of some concern to the court and that is that the bankrupt refused to deliver up certain electronic devices to the joint interim receivers when asked to do so and it appears according to a document I was taken to by Mr Brockman acting on behalf of HMRC that electronic data has either now been deleted or was about to be deleted or it is very likely that such evidence which was held on electronic devices is no longer available to any investigating officer of the court. In a letter to the Official Receiver dated 25 July Farrer & Co explained:

"The joint interim receivers demanded that Mr Baxendale-Walker deliver up his electronic devices as required by the Order. Following non-compliance of Mr Baxendale-Walker, Grant Thornton made an application compel delivery up. Mr Baxendale-Walker claimed that Hawk owned his devices which he was permitted to use under the terms of a licence agreement and had demanded the immediate return of the devices, which he had done. Candey claim to hold an image of the devices, although of course it is not clear what may have been deleted before the image was taken. Action will need to be pursued to obtain and analyse the image of the devices."

14 The letter details requests to four firms of solicitors, three of which refused to deliver up files; investigations into trust structures; investigations into assets linked with Mr Baxendale-Walker in various jurisdictions and investigations into land holdings. The Hawk companies in one form or another, are linked to assets that are in turn linked with Mr Baxendale-Walker.

15 I have mentioned other creditors. Hawk Consultancy and Hawk Recovery now claim to be creditors of Mr Baxendale-Walker in the sum of £26 million odd. The court is not asked today whether they are truly creditors despite aspersions made by Mr Barker's legal team. That maybe an issue for another day. It is curious that those creditors did not appear at the interim receivership hearing or bankruptcy hearing. There is at least a *prima facie* connection between these creditors and Mr Baxendale-Walker which leads me to infer that the claims of those creditors can or should be queried by independent trustees in bankruptcy. There is no allegation or suggestion that Mr Leeds or Mr Hellard are not capable of undertaking such an independent investigation.

16 There is also the matter of HMRC which claimed a debt, as I have said, of £650,000. Since the last hearing that debt has been re-calculated and swollen to £170 million. Again, this is something which I believe an independent insolvency practitioner may wish to investigate when it comes to proof of debt. I would expect a competent insolvency practitioner to query and investigate all creditors save perhaps where there is a judgment debt.

Adjournment

17 What of the application? The application before the court is for an order pursuant to s.375 of the Insolvency Act to vary the bankruptcy order and appoint Mr Leeds and Mr Hellard as from today. It has also been asked for an abridgement of time for service of the application

and that should be made in the circumstances of this particular case, namely, the sudden change of mind of the Official Receiver, the Official Receiver being neutral as to how the bankruptcy progresses. Ms Addy QC and Mr Hackett say that the matter should be adjourned and the reason for the adjournment is to put in evidence. I asked what evidence was required. Counsel was uncertain which left the court in the position of not knowing whether any evidence will assist in my determination of the issues presently before the Court. Ms Addy says that at least 28 days is required for the new creditors to finalise their proofs, that is their calculation of debts. She tells me that accountants are required for this purpose. The calculations of proof is not an issue before the court today. Mr Hackett argues that there has been a lack of time to prepare for the hearing today.

18 Mr Brockman and Mr Bailey oppose the application to adjourn. They rely on the matters I have mentioned above, supported by the evidence of Mr Longworth. They argue that there is no need for a further hearing and that there is some urgency due first to a concern about non-co-operation of an individual who has a history of sheltering assets; secondly because evidence of electronic data having been destroyed or put out of the reach of the Official Receiver and before that the interim receivers and these reflected by what Mr Brockman terms a complete failure of Mr Baxendale-Walker to cooperate with HMRC investigations stretching back ten years or more and the apparent desire of new creditors to delay the appointment of trustees in bankruptcy.

19 There is formal application, made on behalf of Burleigh House (PTC) Limited and the trustees of the Baxendale Walker MDP Trust. Although it was said in correspondence that it would be "impossible" to instruct counsel for the hearing, the Trust did manage to instruct counsel. These parties were given notice. Neither of those represented have disclosed a good reason to adjourn. Only they need more time to consider the application. It is not said why

or what difference further preparation would make. None of the new creditors have expressed the view that they will oppose the application to appoint the interim receivers as trustees in bankruptcy. Nevertheless, they appear to argue that the Official Receiver should not be relinquishing his role as trustee. The Official Receiver does not take that view. In an e-mail sent during the lunch break the Official Receiver has said that he will retire or resign from post upon the appointment of Mr Leeds and Mr Hellard by making a Secretary of State appointment. That was only qualified by saying unless such an appointment is made otiose by this judgment. Prior to that email he was neutral. This is a class action and as such the Court needs to consider whether an adjournment in these circumstances is likely to benefit the creditors as a whole. I am of the view, exercising my discretion, that by acceding to an oral application to adjourn to a single group of creditors that make up a minority of debts owed, where no good reason has been advanced for such an adjournment, in the teeth of the Official Receiver not opposing the application and the majority creditors by far comprising HMRC and the Judgment Creditor, will not be productive and not in the class interests. I shall refuse the application to adjourn.

Jurisdiction

20 Ms Addy argues that the Court does not or may not have jurisdiction to appoint Mr Leeds and Mr Hellard. Returning to the e-mail from the Official Receiver, Mr Gould, responding to a call from HMRC, shown to the Court after the short adjournment, it reads:

"I refer to your telephone call at 13:55. You asked whether, on the basis of the provisional claim of £170,190,367.01 which represents HMRC's claim and is set out in HMRC's skeleton argument which I received yesterday at 18:29, the Official Receiver would consider making an application to the secretary of state for the appointment of Mr Hellard and Mr Leeds of Grant Thornton as joint trustees. The value of your claim as stated above was not

known to the Official Receiver until receipt of your mail. Given that the sum of £170,190,367.01 gives HMRC a substantial majority voting right. I can confirm that but for the application presently before the court the Official Receiver would make such an application."

21 Mr Brockman submits that the e-mail, if more is needed than already before the Court, represents evidence that Mr Gould is agreeable to resign or retire, and be replaced by Mr Leeds and Mr Hellard.

22 Mr Bailey and Mr Brockman argue that there is jurisdiction under s.291(A) of the Insolvency Act 1986. The section provides (where relevant):

"(1) On the making of a bankruptcy order the official receivers becomes the trustee of the bankrupt's estate, unless the court appoints another person under subsection (2).
(2) If when the order is made there is a supervisor of a voluntary arrangement approved in relation to the bankrupt under Part 8, the court may on making the order appoint the supervisor of the arrangement as the trustee….."

23 The following provisions are relevant. Section 292 applies where a person is appointed as trustee in bankruptcy (save for an appointment of the Official Receiver). By subsection (2) it is a requirement that the appointee is qualified to act as an insolvency practitioner. By subsection (3) any power to appoint a person as trustee includes a power to appoint more than two persons as joint trustees. Section 296 permits the Official Receiver to apply to the Secretary of State for the appointment of a person as a trustee instead of the Official Receiver.

24 Ms Addy argues that section 291A of the Act exclusively concerns the first appointment of a trustee in bankruptcy. There was no jurisdiction or power for the Court to order any other person than the Official Receiver or a supervisor to take office. If Parliament had intended the Court to have power to appoint others, the Act would say so. Mr Bailey supported by Mr Brockman, argue otherwise. First as the appointment is not a first appointment section 291A is not relevant. The Court has an inherent jurisdiction to appoint alternatively it has a power to appoint today pursuant to section 363 of the Insolvency Act 1986. It seems to me that this is the correct approach as there has been a first appointment but, if the appointment is to be treated as a first appointment due to the nature of the application before the Court, there remains an inherent jurisdiction or power under section 363 of the Act.

25 Insolvency law is embodied in statute and served by the insolvency rules that are created by statutory instrument. But not all law concerning insolvency is statute based. The common law plays its part. The Court has recently reviewed some of the authorities that have focused on the interface between the statutory nature of insolvency law and the Court's inherent jurisdiction in *Zinc Hotels Ltd* [2018] EWHC 1936. Mr. Justice Henry Carr considered the jurisdiction on an application for the appointment of interim administrators in circumstances where the existing administrators were subjected to an application for their removal. A hostile appointment. The Insolvency Act did not expressly deal with the position faced by the Court.

26 The judge first turned to *Donaldson v O'Sullivan* [2009] 1 WLR in which Lloyd J, having reviewed the relevant case law said (at paragraph 41):

"All of those cases seem to me to support the thesis that bankruptcy is a court-controlled process in relation to which the court has wide powers exercisable for the purpose of the insolvency process as a whole, which are not limited to those conferred expressly by the

relevant legislation. There are non-statutory elements in the law of bankruptcy, such as the principle in Ex P James LR 9 Ch App 609, even though these may result in an application of assets which is not strictly in accordance with legal rights and obligations. There is also scope for the court to direct that things be done or not done in apparent conflict with the express provisions of the legislation."

27 The judge noted that the argument before him was that the Court's supervisory jurisdiction to control its officers is recognised throughout the case law. To this he was taken to *Re Atlantic Computer Systems plc* [1992] Ch 505 at 543G where Nicholls LJ held that the Court power to supervised may be exercised "directly by giving directions, or in the exercise of its control over an administrator as an officer of the court". And in *Re Mirror Group Holdings Limited* [1993] BCLC 538, the Vice Chancellor said, 'The only footnote I add is that Mr Trace contended that in any event, the court has no jurisdiction to give any directions as sought because the Insolvency Act makes no provision for an application for directions such as this. I do not accept this. As noted in *Re Atlantic Computer Systems* [1990] BCC 859 at page 881 G, the court may exercise control over the administrators as officers of the court and may give direction to that end. So the court has jurisdiction." Mr Justice Henry Carr noted that inherent jurisdiction had been recognised even within a provision of the Act, namely paragraph 74 of Schedule B1 to the Act: *Clydesdale Financial Services v Smailes* [2009] EWHC 1745 (Ch) at paragraph 15: "However, I have no doubt that under the general power conferred by paragraph 74(3), the court could remove an administrator and appoint a replacement."

28 The judge was satisfied that there was authority to support the jurisdiction to appoint additional administrators in certain circumstances: "It has also been recognised that there is power to appoint an additional administrator to 'hold the ring' pending an application to

remove the existing administrators. In *Clements v Udal* [2001] BCC 658, Neuberger J, as he then was, held that he had power under the Court's general jurisdiction to appoint new office-holders on a temporary basis, pending an application for removal of the existing office-holder. The appointments were made on a temporary basis as the Court was concerned that Mr Udall had not been given notice of the application.

29 The judge in *Zinc* noted that *Clements & Anor* was decided before the bringing into force of Schedule B1 to the Insolvency Act 1986 and therefore focused on the provisions set out in the Schedule to determine whether an express power existed. The judge found that the Schedule did provide power to appoint interim administrators. For the purpose of this matter, the finding that the Court had inherent jurisdiction in the *Clements* matter, where there was no statutory power to do what the Court was asked to do, is relevant.

30 In *Clements* Neuberger J (as he was) was faced with an outgoing partner in a firm of accountants holding 240 appointments as liquidator, trustee in bankruptcy, supervisor of individual and company voluntary arrangements and administrators. This matter only concerns the appointment of a trustee in bankruptcy. When considering the appointment of voluntary liquidators the Court found that section 108 of the Insolvency Act 1986 applied if no liquidator was acting (taking the last word as meaning not performing the function of liquidator); in respect of voluntary arrangements a power to appoint is found in section 263; the Court had power under its inherent jurisdiction to appoint administrators and liquidators on a temporary basis as there is no statutory provisions that provided for the position. In this respect Neuberger J commented that inherent jurisdiction should be exercised with caution and cited Lord Millett in *Deloitte & Touche AG v Johnson* [1999] BCC 992 to the effect that the Court has an inherent jurisdiction to control the conduct of its own officers.

31 When he became Lord Neuberger he was able to return to the theme of jurisdiction and its interface with the Insolvency Act 1986 in *Re Lehman Bros International (Europe) (in administration)(No 4)* [2017] UKSC 38, [2017] 2 WLR 1497. He observed (paragraph 13):

"Further, despite its lengthy and detailed provisions, the 1986 legislation does not constitute a complete insolvency code. Certain long-established judge-made rules, albeit developed at a time when the insolvency legislation was far less detailed, indeed by modern standards positively exiguous, nonetheless survive…….Provided that a judge-made rule is well established consistent with the terms and underlying principles of current legislative provisions and reasonably necessary to achieve justice, it continues to apply. And as judge-made rules are ultimately part of the common law, there is no reason in principle why they cannot be developed, or indeed why new rules cannot be formulated. However, particularly in the light of the full and detailed nature of the current insolvency legislation and the need for certainty, any judge should think long and hard before extending and adapting an existing rule, and even more before formulating a new rule."

32 I do not believe that Lord Neuberger was considering inherent jurisdiction in *Lehmans*. However, returning to Clements, Neuberger J did not feel it necessary to dwell on the jurisdiction to appoint trustees in bankruptcy on a temporary basis despite there being no express provision in the Insolvency Act 1986. He referred to section 363(1) and commented "those very wide words do give power in appropriate cases to the court to appoint temporary additional trustees in bankruptcy". In *Lancefield v Lancefield* [2002] BPIR at 1108, Neuberger J was again asked to exercise the inherent jurisdiction of the Court in unusual circumstances in connection with insolvency. He found that the court had jurisdiction to wind up a company on its own motion despite the absence of a petitioning creditor and despite there being no petition before the court. He did caution that such jurisdiction would

be exercised only in exceptional cases. His reasoning is instructive. First, he considered what power the Court had been provided by the Insolvency Act to wind up the partnership. He focused on the general power of the court to wind up a registered company under ss 122–130 of the Insolvency Act 1986 and the grounds and noted the regime with regard to the winding-up of unregistered companies is contained in Part V of the 1986 Act where section 221(1) indicates that the provisions relating to winding up registered companies apply. He commented that a construction of the 1994 Partnership Order would provide an answer as to whether the court has jurisdiction to wind up a partnership in the absence of a petition depends. He also thought it necessary, when construing the 1994 Order to bear in mind the general principles of winding-up and the provisions of the Insolvency Rules 1986. He then found that the 1994 Order and Insolvency Rules made it clear that, if a person seeks to wind up a company, then that person must present a petition. He concluded that if the Court had a matter before it and that it was satisfied that one of the grounds set out in the statute applies, then the Court should not be powerless to wind up a company or an unregistered company, even if, contrary to the Act and Rules, no petition had been presented. He reasoned that if satisfied that a ground existed then because, on the facts before the Court, "the making of such an order is inevitable, thoroughly desirable, and urgently required for the protection of many residential landlords and tenants" the Court could exercise the jurisdiction that he found to be inherent.

33 In the context of bankruptcy, sections 302-305 concern the general control of a trustee by the court. Section 363 provides that "every bankruptcy is under the general control of the court and subject to the provisions in this group of parts, the court has full power to decide all questions of priorities and all questions whether of law or fact arising in any bankruptcy." The predecessor of this provision can be traced back to the 1869 Bankruptcy Act which was repeated in an amended form giving the Court general powers in the

Bankruptcy Court in section 105 of the 1914 Bankruptcy Act. Section 105 gave the court "full power". Section 363 subjects all bankruptcies to the power of the court as defined by s.305. In *Donaldson v O'Sullivan* Lloyd LJ considered a number of cases including *Engle v Peri* [2002] BPIR 916 where Ferris J found that the court had jurisdiction to fix the remuneration of the trustee in bankruptcy despite the fact that the relevant provisions of the Insolvency Rules appeared to create a comprehensive code for the purpose which did not include what he was being asked to do. In *Hardy v Buchler* [1997] BPIR 643, the court found it had jurisdiction under s.363 to make an order securing cash in the possession of a bankruptcy estate despite the insolvency procedures not being followed.

34 Ms Addy relies on para.41 of *O'Sullivan* as indeed do all the parties before the court but she in particular relies on the words:

> "If the Act said in terms that the court could make certain kind of order, only in given circumstances it would be a very strong construction to hold that it could do so in other circumstances as well."

She then refers back to s.291(A) and says that those are the certain circumstances, namely, that upon the making of a bankruptcy orders, the Official Receiver is appointed unless there is a supervisor already in office. In such circumstances the court may appoint the supervisor as trustee.

35 Mr Bailey and Mr Brockman rely on the immediately preceding sentence of paragraph 41, that there is also scope for the court to direct that things be done or not done in apparent conflict with the express provisions of the legislation.

36 In my judgment, *O'Sullivan* should not be read as if it were an Act of Parliament. The general tenor of Lloyd LJ dictum is that section 363 of the Insolvency Act 1986 provides very wide powers and that the control of any bankruptcy is given to the Court, this may even include contradicting language in the Insolvency Act if to do so is just and convenient in aid of controlling the process. This is because of the unusual language (not found elsewhere in the legislation) used in section 363 of the Act giving the Court "full power".

37 Prior to 2015 there were three different ways in which a trustee in bankruptcy could be appointed. First pursuant to section 292 of the 1986 Act at a general meeting of the bankrupt's creditors; secondly by appointment of the Secretary of State; and lastly the Court had a power to appoint a trustee where an insolvency practitioner's report has been submitted under a debtor's petition or where a bankruptcy order was made after a voluntary arrangement had been approved when the court could appoint the supervisor of that arrangement. It was this provision (section 292 of the 1986 Act) that was being tested in *Donaldson v O'Sullivan* at first instance and with the decision being upheld in the Court of Appeal. The first instance decision of His Honour Judge Havelock-Allan Q.C., sitting in the High Court in Bristol, (reported [2008] B.P.I.R. 288), held that the powers of appointment in section 292(1) are not exhaustive. Section 291A was introduced by s.133 of the Small Business, Enterprise and Employment Act 2015 and provided for the first appointment of a trustee in bankruptcy following the making of a bankruptcy order.

38 In my judgment section 291(A) does not cut down section 292 nor was it intended to. It does not state that the Court is prevented from making an appointment in circumstances such as the present. The change made by section 291A is that in default of any order made by the Court the Official Receiver will automatically be appointed the trustee in bankruptcy. The previous provision permitting the appointment of a supervisor of a failed voluntary arrangement remains. The express mention of appointing a supervisor in such circumstances

reflects a policy of proportionality and convenience. The supervisor will have had the advantage of having made contact with the debtor, having made some investigation into his or her affairs and had prior dealings with the debtor turned bankrupt as a result. The supervisor is very likely to be the petitioner due to a failure of a term in the voluntary arrangement. It is just and convenient that the supervisor, if he wishes to take the appointment, be able to do so. Far more uncommon is a bankruptcy following the appointment of interim receivers as the appointment of such receivers is itself unusual. The new provision is silent on whether interim receivers who had been in office prior to the making of a bankruptcy order may be appointed by the Court and does not cut down the "full power" provided to the Court by section 363 of the 1986 Act.

39 The Court has previously held that the power provided by section 363 of the 1986 Act is very wide. It permits the court, who has a bankruptcy case before it, to exercise its powers in a manner and in a way that is beneficial to the creditors as a class. Taking account of the Official Receiver's position, the position of the new creditors (the remuneration trust and Burleigh House PTC Ltd) that have not opposed the appointment of Mr Hellard or Mr Leeds but merely wish an adjournment, the Court should exercise its power and appoint in the circumstances I have described namely (i) interim receivers have been appointed to prevent dissipation of assets (ii) those interim receivers are qualified to act as trustees in bankruptcy (iii) they consent to act (iv) they have already made some investigations into the dealings of the bankrupt (v) their knowledge will be useful to any office-holder dealing with the affairs of the bankrupt and will save time and costs (vi) there has been non-cooperation by the bankrupt in relation to his tax affairs (vii) the bankrupt has not denied that he has failed to co-operate with HMRC (viii) there is evidence before the court that there has been deliberate acts to delete, hide or make difficult obtaining electronic evidence held on mobile

devices and (ix) there has been a failure to deliver up such devices despite a request that the evidence be delivered to the interim receivers.

40 In my judgment exercising my discretion these are strong reason to make the appointments. The appointments will have the same advantage to the estate as the appointment of a supervisor following a failed voluntary arrangement and the appointments are just and convenient, in the interest of the administration of justice, proportionate, and without any real opposition. I add that I am satisfied that the sooner the trustees are appointed the better. Urgency has been made out. Mr Baxendale Walker's affairs are complex and there is strong third-party evidence that he has deliberately avoided paying his taxes and deliberately sheltered assets.

41 If I am wrong and there is no power pursuant to section 363 of the 1986 Act, I find that the Court has an inherent jurisdiction. That will not contravene the principles set out by Lord Neuberger in *Re Lehman Bros International (Europe) (in administration)(No 4)* as in my view Lord Neuberger was talking of substantive law issues rather than inherent jurisdiction. There is nothing in the statute that prevents the appointment of former interim receivers as trustees in bankruptcy. The requirements of section 292 of the Insolvency Act 1986 are satisfied; the Official Receiver has indicated that he is willing to step down and have the interim receivers appointed via a secretary of state appointment; the court is seized of the bankruptcy; the Court should not be powerless to appoint and in my judgment (following the rationale of Mr Justice Neuberger in Lancefield), the making of such an order is inevitable, thoroughly desirable, and required for the protection of estate.

42 I exercise my jurisdiction pursuant to section 363 of the Act alternatively my inherent jurisdiction to appoint the interim receivers to the office of trustee in bankruptcy and order that the first appointed trustee-in bankruptcy be removed.

43 If the application before me is persisted with in its current form, I review the bankruptcy order made and appoint the interim receivers as trustees-in-bankruptcy. In my judgment this course has the obvious objection that it does not reflect reality. The Official Receiver has been in post. If required I shall give permission to amend the application as no prejudice can be said to arise by the making of such amendment. The Applicant has sought the appointment of Mr Leeds and Mr Hellard and there has been no opposition other than that which I have set out in this judgment. There is no argument as to the form of the application but in any event the Respondent and the new creditors have knew the substance of the application was to appoint.

Abridgment of time

44 I turn now to abridgment of time. I shall abridge time. All parties have attended today and argued the case. No good reason has been given that I should not abridge. Even though Ms Addy QC was appointed to represented some of the new creditors (as I have called them) late in the day she had done an admirable job in arguing for an adjournment and raising the jurisdiction issue.

45 I now turn to the issue of the application form and ask counsel to address me in relation to how such an order should be made (inaudible) so far.

(After a short pause)

46 This is an application for permission to appeal the appointment of Mr Hellard and Mr Leeds as trustees in bankruptcy with the Official Receiver having been appointed the trustee in

bankruptcy on 11 July 2018 following the making of a bankruptcy order pursuant to the automatic provisions in s.291(A).

47 I have found in short that the court had jurisdiction either under its inherent jurisdiction or pursuant to section 363 of the Insolvency Act 1986.

48 It is said that because s.291(a) is a new provision that this is the first case that concerns the appointment of the Official Receiver automatically following the making of a bankruptcy order. It seems to me even though it is a new provision as I have explained in my judgment it does not alter the Court's power to control the Court process and make appointments if the provision of section 292 of the 1986 Act is satisfied. The mere fact that s.291(A) automatically appoints the Official Receiver at a particular point in time does not specifically prevent the appointment of interim receivers becoming trustees in bankruptcy and does not make exhaustive or what considered previously to be inexhaustive: the reasoning in *Donaldson v O'Sullivan* is not, in my judgment affected by the provision of s.291(A) which, merely brings forward the appointment of the Official Receiver obviating the need to hold a meeting of creditors soon after the making of a bankruptcy order..

49 There is no real prospect of success and no other good reason why the appeal should proceed.

50 It is then said that the court should have adjourned. I have dealt with the adjournment application. The application to appeal that decision does not advance the arguments made previously. It is said that the new creditors wanted time to put in evidence. I specifically asked what evidence did the new creditors have in mind and how would such evidence help determine the appointment asked for by Mr Barker. There was a failure to provide any

particulars other than to suggest that the new creditors wanted to consider the actions of the interim receivers. Their appointment today does not prevent the new creditors considering their actions in the future.

51 It seems to me that this has no real prospect of success because as an adjournment would have been wasteful of Court time, lead to uncertainty in respect of the affairs of the bankrupt, and would not have been in the best interests of the administration of justice.

52 It is said that there is no real urgency of this matter. I have dealt with urgency in my judgment and will not repeat it again. The mere assertion that there is no urgency is insufficient to grant permission to appeal.

53 All those factors lead me to conclude that there are no real prospect of success of an appeal on the basis that there should have been an adjournment. It is an empty submission and there is no other good reason why permission to appeal should be permitted.

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