Neutral Citation Number: [2019] EWHC 291 (Ch)

Case No: 412 of 2012
BR-2012-001362

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
RE: KULDIP SINGH BIRDI

Royal Courts of Justice
7 Rolls Building, Fetter Lane
London EC4A 1NL

Date: 15/02/2019

Before :

MR ADAM JOHNSON Q.C.
(SITTING AS A DEPUTY JUDGE OF THE HIGH COURT)

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Between :

(1) ANDREW MILES	**Applicants**
(2) PIERRE NOAH	
(3) ANTONY ANTONIADES	
(4) GURDIP BIRDI	
- and -	
(1) ALAN PRICE	**Respondents**
(2) GARY PETTIT	
(3) OFFICIAL RECEIVER	
(4) PBC BUSINESS RECOVERY & INSOLVENCY	

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The Applicants were not represented and appeared in person
Tina Kyriakides (instructed by **Ashteds Solicitors**) for the **First, Second and Fourth Respondents**
The Third Respondent did not appear and was not represented

Hearing dates: 22 and 23 January 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Mr Adam Johnson QC:

Introduction

1. A number of Applications are before the Court by which certain creditors in the bankruptcy of Mr Kuldip Singh Birdi seek the removal of Mr Birdi's Bankruptcy Trustee.

2. Although originally there were four Applicants, the proceedings by Mr Antoniades were compromised shortly before the matter came on for hearing. His application was dismissed by consent and he agreed to pay a sum of £12,000 towards the Respondents' costs.

3. Consequently, applications have been pursued by only three Applicants ("the Applicants"), namely Mr Andrew Miles, Mr Pierre Noah and Mrs Gurdip Birdi (the wife of Mr Birdi). They have all submitted proofs of debt in Mr Birdi's bankruptcy, and claim they alone are the "*legitimate proven*" creditors of Mr Birdi. Together their claims total £189,983, broken down as follows: Mr Miles, £49,772; Mr Noah, £16,580; and Mrs Birdi, £123,631.

4. Mr Birdi was made bankrupt as long ago as 21 March 2012, on the Petition of HM Revenue & Customs. After a period of suspension his Bankruptcy was discharged on 4 July 2013, but on 21 January 2015 a Bankruptcy Restriction Order was made against him for a period of nine years beginning on 4 September 2014.

5. The First Respondent to the present Applications, Mr Price, was appointed as Mr Birdi's Trustee in Bankruptcy at a meeting of creditors held on 20 July 2012. In January 2014, Mr Price retired from practice, and by means of a Block Transfer Order dated 22 May 2014 he was removed as Trustee and the Second Respondent, Mr Pettit, was appointed in his place. Mr Pettit is a director of the Fourth Respondent, PBC Business Recovery and Insolvency Limited ("PBC").

6. The business of realising the Bankrupt's estate has been a long and difficult one. Current figures show there are no funds available for distribution to creditors. What seems to be at the heart of the Applicants' complaints is the belief that the length and difficulty of the process, and the resultant cost, are all the fault of the two Trustees, Mr Price and Mr Pettit. Various complaints of dishonesty and mismanagement are made, both in relation to the process for appointment of the two Trustees and in relation to their conduct of the Bankruptcy proceedings. These include the allegation that some or all of the other creditors who have submitted proofs in the Bankruptcy are "*bogus creditors*". The upshot is that the Applicants say they have been cheated out of their distributions, in the sense that if the Trustees had done their work properly, the three of them as "*legitimate proven*" creditors would have been paid out long ago, whereas now they stand to get nothing.

7. The Applicants' complaints are advanced in a series of Application Notices, issued between 20 August 2018 and 24 September 2018, and in the Applicants' witness statements. The precise forms of relief sought have been put forward in a number of different ways in different documents. I will not attempt a close analysis of the different formulations. Ultimately, it seems to me that aside from one point which is specific to Mrs Birdi, the Applicants are all pursuing the same criticisms of both Mr Price and Mr Pettit, and all wish to achieve the same basic objectives, which are either:

    i) An Order under section 298(1) Insolvency Act 1986 ("IA") which removes Mr Pettit in favour of the Official Receiver, and which in light of both the alleged unlawfulness surrounding the appointments of Mr Price and Mr Pettit, and in light also of their alleged "*fraud/misfeasance*", reverses or rescinds their appointments and/or remuneration, and enables the distributions to be made to the Applicants which they say should have been made had the Bankruptcy been lawfully and properly managed from the outset, including as regards the exclusion of "*bogus creditors*"; alternatively

    ii) An Order under section 298(4) IA requiring Mr Pettit to convene a creditors' meeting to consider and approve a resolution for his removal as Trustee and the appointment of a new Trustee, whose role should be to investigate the alleged wrongdoing of Mr Price and Mr Pettit and to take steps to unwind the perceived effects of that wrongdoing, and again to make the distributions to the Applicants which they say should have been made had Mr Birdi's Bankruptcy been properly managed from the outset, including as regards the exclusion of "*bogus creditors*".

8. The specific point which affects Mrs Birdi is that in her Application Notice dated 10 September 2018, she seeks "*a declaration that the order to pay the Trustee £300,000 in Trustee's possession action against Gurdip Burdi be rescinded/revoked*". I will explain this further below.

9. In summary, therefore, the principal issues I have to decide are as follows:

    i) Should an Order be made under IA section 298(1) for the removal of Mr Pettit, together with such ancillary Orders as may be necessary so as to allow distributions now to be made to the Applicants?

    ii) Should an Order be made under IA section 298(4) requiring Mr Pettit to convene a creditors' meeting, for the purpose of considering his own removal?

    iii) Is Mrs Birdi entitled to the declaration she seeks in relation to the £300,000 paid by her in January 2017 to the then Trustee, Mr Pettit?

The Course of the Bankruptcy Proceedings

10. It is useful to describe some features of the bankruptcy proceedings so far.

11. The Bankrupt, Mr Birdi is a skilled motor technician. He specialised in work on Italian supercars, particularly Ferraris. He owned premises at units 2, 8, 9 and 10 Hayes Metro Centre, Springfield Road, Hayes from which he carried on business as a

sole trader until about December 2011. From about 2010, another business operated from the same premises: this was a company called Verdi Ferrari (After Sales) Limited ("Verdi Ferrari"), owned by Mr Birdi's son, Kabir Virdi. In the event, Verdi Ferrari was wound up by the Court on 11 December 2011 and Kabir Virdi was made bankrupt on 22 June 2012. As already noted, between these dates, Mr Birdi himself was declared bankrupt on 21 March 2012. Thus, there were three different bankruptcy and insolvency proceedings on foot at the same time, involving Mr Birdi, his son and Verdi Ferrari.

12. To complicate matters further, from late 2011 or early 2012, Precision Engineering Auto Ltd ("Precision") also began trading from units 9 and 10 of the premises at Springfield Road, Hayes. The nature of the relationship between Mr Birdi and Precision has been the matter of considerable dispute, including as regards the use by Precision of certain equipment owned by Mr Birdi ("the Equipment"), particularly an MOT testing station and diagnostic equipment.

13. The initial meeting of creditors on 20 July 2012 which resulted in Mr Price's appointment was chaired by Janet Hallamore, Assistant Official Receiver. The documents supplied for these Applications include a "*List of Proofs & Proxies*" considered at that meeting, bearing certain handwritten annotations. This shows that at the time, along with Mr Price, "*S Grant and K Stevens of Wilkins Kennedy*" were also considered for appointment as Mr Birdi's trustee.

14. A further document has also been produced relating to this meeting, namely a set of handwritten notes, which Mr Pettit in his First Witness Statement says he and Mr Price consider may have been produced by Ms Hallamore. Both the handwritten notes and the annotations on the "*List of Proofs & Proxies*" indicate that Mr Antoniades, originally one of the Applicants in this matter, supported the appointment of Mr Price.

15. Overall six creditors voted for Mr Price, and six for Messrs Grant and Stevens; but the majority by value were for Mr Price - £240,996, versus £221,472 for Grant and Stevens. According to Mr Pettit's evidence, there was also an issue as to whether representatives of Wilkins Kennedy could consent to act as Trustee, given that Wilkins Kennedy had acted for Mr Birdi and are one of his creditors. In any event, on 20 July 2012, Ms Hallamore served a Notice under Rule 6.120 of the then Insolvency Rules, confirming that Mr Price had been appointed as Trustee of Mr Birdi's estate.

16. Among those creditors whose votes were counted in favour of Mr Price were Max Donnelly, Randal Hockey, Sean Downes and Craig Swenden (or Sweden). The present Applicants complain about their claims (and possibly others) having been brought into account for voting purposes, because they say they are false or bogus creditors. I will return to this point below.

17. The Trustees' evidence is that on 29 May 2013, Mr Price sent an initial report to the then known creditors, and by the same letter gave notice of a meeting of creditors to be held on 26 June 2013, to consider the basis of the Trustee's remuneration and disbursements. The meeting was held on 26 June 2013, and the proposed resolutions were duly passed, as follows:

> "1. That the Trustee is authorised to draw remuneration on a time costs basis with such remuneration to be drawn on account from time to time as funds permit.
>
> 2 That the Trustee be authorised to draw 'Category 2' disbursements out of the assets as an expense of the estate at the rate disclosed in the policy statement circulated to creditors with the Notice of the meeting."

18. On 4 July 2012, Mr Birdi completed a Bankruptcy Preliminary Information Questionnaire. The Trustees' position is that this was materially deficient, but the Applicants say it identified a number of assets which were sufficient to enable distributions to be made to them as "*legitimate proven*" creditors, including in particular Mr Birdi's interest in the matrimonial home he shared with Mrs Birdi, namely 81 Shaftesbury Avenue, Norwood Green, Southall.

19. The Trustees' position is that in the early stages of the Bankruptcy Mr Birdi did not co-operate with either the Official Receiver or Mr Price. Orders were made for Mr Birdi to be publicly examined. Four hearings took place, on 29 March 2013, 16 May 2013, 26 June 2013 and 28 August 2013, the first two of which were adjourned to enable Mr Birdi to provide further information.

20. Precision was a particular focus of attention. The sole registered shareholder in Precision was a Mr Khot, who was also recorded as sole director, but Mr Price's inquiries led him to conclude that Precision was in fact beneficially owned by Mr Birdi, and that Mr Birdi was a shadow director. Mr Khot transferred his interest in Precision to Mr Price, and on 9 July 2013 Mr Price entered the units occupied by Precision and seised the Equipment. This was later sold by way of online auction on 10 September 2013, realising a total sum of £68,454 (£40,154 after costs).

21. The Trustees' evidence is that on 18 September 2013, Mr Price circulated the first of a series of Annual Updates to creditors, covering the period to 19 July 2013. The present Applicants dispute having seen this or any subsequent Annual Updates. I will return to this point below.

22. As to other assets falling within Mr Birdi's estate, after Mr Price was replaced by Mr Pettit in May 2014, Mr Pettit applied for an Order for sale and possession of Mr Birdi's matrimonial home, which was owned in equal shares by Mr and Mrs Birdi. The trial of those proceedings ("the Possession Proceedings") was listed for 6 and 7 April 2016. Shortly before that, on 8 March 2016, Mr Birdi issued an application for an injunction in the Chancery Division against 8 Respondents, including Mr Price, Mr Pettit, PBC and the Official Receiver ("the Injunction Proceedings").

23. On 7 April 2016, after the hearing in the Possession Proceedings but before judgment was given, a Tomlin Order was agreed between Mr Pettit and Mrs Birdi. Mrs Birdi was given until 31 January 2017 to pay the Trustee £120,000 plus interest. In the event, that sum was not paid and subsequently, in order to prevent the trustee from enforcing possession and sale, Mrs Birdi paid the sum of £300,000 (which was about the market value of Mr Birdi's interest in the matrimonial home at the time). It is this transfer which Mrs Birdi now says in her Application Notice should be rescinded or revoked.

24. In the meantime, the hearing in the Injunction Proceedings took place on 16 June 2016. Mr Birdi was given permission to withdraw his application on the basis that he paid the Respondents' costs.

25. Then in November and December 2016, yet further litigation developed. This was in the form of two sets of proceedings brought by Mr Birdi himself, and by a Mr Raj Pal Senna. Their first claim form was issued on 2 November 2016, naming as Defendants Mr Price, Mr Pettit, PBC, Janet Hallamore, and a Mr Awde of HMRC. Among the matters covered by the first set of proceedings were complaints about the sale and seizure of the Equipment held by Precision and seised on July 2013. Their second claim form was issued on 19 December 2016, and named as Defendants Ashwin Mody and Charlotte Clarke of Ashteds (solicitors acting for Mr Price and Mr Pettit), Jessica Rajakuma (counsel who had formerly acted for Mr Pettit), and Mr Kevin McAndrew of Eddisons (who had sold the Equipment at auction).

26. Mr Birdi and Mr Senna subsequently issued an application in their first action for permission to bring committal proceedings, to strike out the Defendants' defence and/or for summary judgment.

27. In the event, at a hearing on 14 March 2017, Newey J. struck out (1) all Mr Birdi's and Mr Senna's claims made in the second set of proceedings, and (2) their claims in the first set of proceedings against Ms Hallamore and Mr Awde. Newey J. further expressed the view that those various claims were totally without merit.

28. That left outstanding Mr Birdi's and Mr Senna's claims against Mr Price and Mr Pettit in the first set of proceedings in relation to the Equipment. These were put forward on a number of wide-ranging bases. After hearing further from the parties on 16 March and 22 May 2017, Newey J. in his Judgment dated 20 July 2017 ([2017] EWHC 1859 (Ch)) determined that only certain, limited claims by Mr Birdi in relation to the Equipment should be permitted to continue, but no other claims. As regards Mr Senna, Newey J. held that he had "*no real prospect of proving that he has or had any material interest in any of the equipment at issue*" (Judgment at [37]), and therefore granted summary judgment against him and recorded his view that Mr Senna's claims were totally without merit. Newey J. at [15] also referred to two other relevant occasions, in March and December 2016, when applications in the context of Mr Birdi's Bankruptcy had been marked as totally without merit. Newey J. made an ECRO against Mr Senna (but not Mr Birdi).

29. The upshot was that Mr Birdi's remaining claims in relation to the Equipment proceeded to trial before HHJ Eyre QC on 8, 9, 10 and 11 October 2018. These were claims that the Equipment seised from Precision and sold at auction in September 2013 did not form part of the bankruptcy estate of Mr Birdi, because it fell within the exception in section 283(2)(a) Insolvency Act 1986 as regards: "*such tools, books, vehicles and other items of equipment as are necessary to the bankrupt for use personally by him in his employment, business or vocation*".

30. The trial of Mr Birdi's claims involved detailed investigation of a number of matters, including in particular investigation of the nature of Mr Birdi's relationship with Precision and of the circumstances surrounding the seizure and sale of the Equipment in 2013. HH Judge Eyre QC gave a comprehensive judgment on 30 November 2018: [2018] EWHC 2943 (Ch). I will refer in more detail below to some of his findings.

For now it is sufficient to note his conclusions that (1) although certain limited items among the Equipment did *not* fall within Mr Birdi's bankruptcy estate (i.e. a particular mobile tool chest and certain items of diagnostic equipment), the majority of the seised items did; but in any event (2) even as regards the excluded items, Mr Price had reasonable grounds at the time to believe that they were part of the estate, based on the confusing and contradictory information Mr Birdi had given him (see [2018] EWHC 2943 (Ch) at [9]-[20] and at [73]-[78]). After describing the different accounts given at different times by Mr Birdi, both as regards his interest in the Equipment and as regards its value, the Judge said at [21]:

> "The history demonstrates that even when giving sworn evidence and when providing information in formal settings the Claimant has been quite prepared to set out the account which he, at the time, believed best suited his purposes regardless of the accuracy or truthfulness of what was being said. In partial explanation the Claimant sought to say that he had been shocked and upset by the way in which he was being treated by the First Defendant [Mr Price]. <u>There is no basis in the evidence or documentation before me to suggest that the First Defendant's actions as trustee in bankruptcy were improper or out of the ordinary</u>." (My emphasis).

31. As to the current position overall in the Bankruptcy:

i) The latest annual report for the period 21 May 2018 shows total asset realisations as at that date of £595,053, but associated costs and distributions of £556,827, leaving an available total of £38,225.

ii) The costs figure as at 21 May 2018 included legal fees of £210,810, and fees paid to the Trustees themselves as at that date of £116,795. However, (1) even as at 21 May 2018, although the Trustees had drawn remuneration only of £116,795, their overall fees as at that date stood at £259,011.29 and have increased since then (by 12 October 2018 they stood at £278,886.29); and (2) additional legal fees have also been incurred since 21 May 2018, largely in connection with the proceedings by Mr Birdi.

iii) As at 21 May 2018, claims had been received from 26 unsecured creditors totalling £985,552, and in addition HMRC has a claim for £62,821, giving a total of £1,048,373.

iv) The trustees have the benefit of certain costs orders against Mr Birdi and Mr Senna. Attempts are being made to recover on those orders and in Mr Pettit's view that will enable the administration of the estate to be closed.

32. On this evidence, it follows that the estate is an insolvent estate and that there will be no distributions to creditors.

The Present Applications

33. The present Applications have their genesis in a series of complaint letters sent to Mr Price and Mr Pettit by the Applicants in August and September 2018, shortly before the trial in front of HHJ Eyre QC mentioned above. Mr Miles sent an initial letter dated 20 August 2018, making many of the same allegations of dishonesty, in particular in relation to Precision and the Equipment, which still feature in the present Applications. His letter also purported to give notice to Mr Pettit under IA section 298(4)(c), requiring Mr Pettit to convene a meeting of creditors within 21 days to sanction removing Mr Pettit as Trustee. Mr Antoniades sent a similar letter on 28 August, Mr Noah on 31 August, and Mrs Birdi on 7 September 2018.

34. The relevant Applications were issued in August and September 2018. It seems that initially there was a desire to pursue them urgently. Relatedly, on 28 September 2018 the Applicants (including Mr Antoniades) purported to hold a meeting of creditors, at which they resolved to remove Mr Pettit and to replace him with the Official Receiver. The Applicants had no proper standing to hold such a meeting, and it was obviously ineffective. The perceived urgency may have been connected with the pending trial in relation to the Equipment, which was due to be heard in early October 2018.

35. At a hearing before Zacaroli J. on 3 October 2018, directions were given for evidence to be exchanged in the Applications in October and November, and the Applications listed to come on with a 1.5 day time estimate on the first available date after 30 November 2018. This seems not to have satisfied Mr Noah, however, who made a further application, seeking a hearing on 30 October 2018. That separate application, which in fact only came on for hearing on 1 November 2018, was dismissed by Fancourt J. and marked totally without merit.

36. The matter came on before me on 22 January 2019. At the start of the Court day at 10.30am, however, none of the Applicants was present. I adjourned for a short period to allow inquiries to be made by the Respondents' solicitors. When the hearing reconvened at about 11am, only one of the Applicants, Mr Noah, had appeared. His position was that he was expecting Mr Miles to present the Applicants' submissions, and that he (Mr Noah) had not prepared to do so. Mr Noah indicated that he had been in contact with Mr Miles in the few days prior to the hearing, and he had assumed Mr Miles would be present, although Mr Miles had apparently said he "*felt rough*". In any event, he had been trying to speak to Mr Miles that morning but his phone was not on. I decided to adjourn the hearing again for approximately one hour, to allow further inquiries to be made, and asked Mr Noah and the Respondents to make efforts to contact Mr Miles and Mrs Birdi, and to indicate that I intended to resume the hearing at 12.15pm.

37. When the hearing reconvened, I was shown two emails from Mrs Birdi to the Respondents' solicitors, at 12.02pm and 12.10pm respectively. In the first she said:

> "The lead applicant for this case is Mr Andrew MILES who has not been able to attend court today. I was notified yesterday evening that Mr Miles was unwell and was unsure if he would be able to attend court today.

> This morning, I was notified by Mr Miles' partner that he was taken to hospital for a suspected heart attack.
>
> I am unable to provide any further information or enquire about Mr Miles' health at this time and any further information regarding his wellbeing will need to be requested from him directly at another date.
>
> Due to Mr Miles' current circumstances and him being the lead applicant in the case, I subsequently did not see fit my attendance in court today".

38. In her second email Mrs Birdi said:

> "Following on from my previous email, it is important to note that when speaking to Mr Miles yesterday, he was due to request for an adjournment of today's hearing.
>
> Upon reflection, this information may not be available to the court today and not clear in my above email, therefore was important that I followed on from my previous email for the clarity of all parties involved".

39. Consistent with this, Mr Noah also asked me to adjourn the hearing, in light of Mr Miles being unavailable. Ms Kyriakides urged me not to. She said the revelation that Mr Miles was ill was somewhat suspicious, in particular given that he had been well enough to finalise and serve a further Witness Statement (his Fourth) the previous day: it had been sent to the Respondents at about 5pm. She also said, looking at Mrs Birdi's emails, that it was unclear when precisely she had been told that Mr Miles was indisposed, and that in any event it was surprising there had been no earlier communication with the Respondents' solicitors. She said that the Applications involved serious but entirely baseless allegations of wrongdoing and fraud against professional men, and that it would be wrong to let them drift. She described the Applications as hopeless.

40. I asked Ms Kyriakides to address me further on the latter point, before deciding how to proceed. My initial impression was that the Applications faced some very serious difficulties, but I was conscious of the long and detailed history and wished to have some of the background explained to me. Ms Kyriakides developed her submissions, largely by reference to the points in her Skeleton. I then invited Mr Noah to respond, which he briefly did.

41. At the end of the afternoon, I indicated that in all the circumstances I was not minded to adjourn disposing of the Applications, despite the absence of Mr Miles and Mrs Birdi, and proposed to reconvene the following morning at 10.30am, with a view to concluding the hearing then. My reasons in summary were:

    i) I had no properly reliable evidence available to me, or indeed any satisfactory explanation of, Mr Miles' alleged medical condition. He had made no adjournment application himself. It was impossible for me therefore to assess his true condition, and it seemed to me I was entitled to be sceptical given both

the very limited information available and the manner in which it came to be disclosed. Mr Miles had been well enough to finalise his Fourth Statement on 21 January 2019, and Mr Noah told me he had spoken to Mr Miles on the telephone the previous evening at about 6.45pm, as a result of which he had assumed Mr Miles would be present at the hearing.

ii) I had no way of knowing what sort of adjournment might or might not be suitable to accommodate Mr Miles' medical condition, even if I became satisfied that he had one. I was effectively being asked to agree to an open-ended adjournment, pending provision of further information. That seemed to me especially undesirable given Ms Kyriakides' point that the Applications involved serious allegations against professional men which, as a matter of basic fairness, should be resolved quickly.

iii) There seemed to me to be no good reason why Mrs Birdi was not present at the hearing. She – like Mr Noah – had advanced an Application, again making very serious allegations against the two trustee Respondents. It seemed to me I was entitled to expect her to be present in Court to help explain her case, and engage in the exercise of the Court resolving the allegations she had made, even if (again like Mr Noah) she had assumed that Mr Miles would take the lead.

iv) Mr Noah was present at the hearing, and the same broad logic applied to him.

v) It was correct that continuing with the hearing might involve resolving the Applications made by Mr Miles and Mrs Birdi in their absence, but in all the circumstances, including in light of what seemed to me the serious difficulties faced by the Applications, that was justified.

42. I therefore adjourned the hearing until the morning of 23 January 2019. I invited the parties present to communicate with Mr Miles and Mrs Birdi, to indicate that that was my intention, but also that I would be open to further representations being made to me the following day, if supported by proper evidence (including if necessary medical evidence).

43. On the afternoon of 22 January, I received an email from Mr Miles via the Court. This became available to me only after the end of the day's sitting. It was sent to Chancery Listing at 15.45. In it Mr Miles said that he had had personal complications and had had to attend A&E, and had only just left hospital. He said the hospital had advised he should not continue to cause himself any stress as his blood pressure was extremely high. He said he would "*forward on proof from where I have been today, which I can obtain from the Doctor as needed*". He concluded by saying: "*I am unsure as to what position this now puts me in – the doctors (sic.) recommendation was to make my health a priority*".

44. In fact, no further proof from a Doctor as to Mr Miles' condition has been provided.

45. In the event, on the morning of 23 January Mr Miles was present in Court, together with Mr Noah. Mr Miles said he had been in A&E the day before, and complained of

feeling unwell and being short of breath. I said to him that we could take breaks during the course of the hearing if he wished. Despite his condition, he had had time to prepare a further (Fifth) Witness Statement dated 22 January 2019, and also a Skeleton Argument, both of which were handed in on the morning of 23 January. Ms Kyriakides did not object to this, but did make the point that Mr Price and Mr Pettit had not had an opportunity to respond to Mr Miles' recent evidence, and that I should bear that in mind when considering it.

46. Mr Miles then made an application to nominate Mr Raj Pal Senna as his McKenzie Friend. This was the same Raj Pal Senna who had pursued his own claims against Mr Price and Mr Pettit in relation to the Equipment, and who had been made subject to an ECRO by Mr Justice Newey. Mr Miles' application was made on the basis that he was "*unwell and was admitted to A&E yesterday"*. His Application Notice went on to say*: "I am extremely stressed out by this case and I cannot cope*".

47. I declined to allow Mr Senna to exercise any rights of audience. That seemed to me incompatible with his ECRO. In light of Mr Miles' claims about his state of health, however, I agreed (with some reluctance) to permit Mr Senna to provide the more limited support appropriate for a McKenzie Friend, including helping with case papers and quietly giving advice to Mr Miles. In the event, it became clear during the hearing that Mr Miles was heavily dependent on Mr Senna in presenting his case, and on a number of occasions was simply repeating to the Court what Mr Senna told him to say. In any event, I am satisfied that Mr Miles was given a full opportunity during the morning of 23 January of making all the points he wished to make, following which Ms Kyriakides briefly responded.

48. I made it clear to Mr Miles that he was entitled to reply to Ms Kyriakides' submissions after the lunch adjournment, but in the event Mr Miles did not reappear in Court (I received an email from him later that afternoon, apologising and saying he had had to leave because of a recurrence of his severe chest pains). I therefore made a direction enabling Mr Miles to make further submissions in writing if he wished to, such submissions to be provided by Friday 1 February 2019. In the meantime, since Mr Miles had not been present in Court during Ms Kyriakides' submissions the previous day, I directed her to provide a note summarising as best she was able the points she had made which were not reflected in her Skeleton. Ms Kyriakides duly produced her Note on Friday 25 January 2019, and Mr Miles provided his on Friday 1 February 2019.

49. Mrs Birdi was not present in Court for any part of the hearing, but in the circumstances it seemed to me fair to continue without her. She plainly knew the hearing was taking place, and had made a deliberate decision not to attend. In any event, her two emails of 22 January 2019 indicated she was content to allow Mr Miles to make submissions on her behalf.

Should an Order be made removing Mr Pettit as Trustee?

The Law

50. The starting point is section 298 IA, which provides:

> "Subject as follows, the trustee of a bankrupt's estate may be removed from office only by an order of the court or by a decision of the bankrupt's creditors made by a creditors' decision procedure instigated specially for that purpose in accordance with the rules."

51. There is limited direct guidance in the authorities on the operation of this provision. I have been referred to Smedley v. Brittain [2008] BPIR 219, a decision of Registrar Nicholls, and also to Doffman & Isaacs v. Wood & Hellard [2011] EWHC 4008 (Ch) [2012] BPIR 972, a decision of Proudman J. In those cases, inspiration was drawn from cases under ss108(2) and 172(2) IA, dealing with the removal from office of liquidators: see for example Re Keypack Homecare Ltd [1987] BCLC 409; Re Buildhead Ltd (In Liquidation) No. 2 [2004] EWHC 2443 (Ch), [2004] BPIR 1139; Re Edennote Ltd; Tottenham Hotspur plc & Ors v. Ryman & Anor [1996] 2 BCLC 389; and AMP Music Box Enterprises Ltd v. Hoffman [2002] EWHC 1989 (Ch), [2003] 1 BCLC 319.

52. In Doffman & Isaacs v. Wood & Hellard [2011] EWHC 4008 (Ch) [2012] BPIR 972, Proudman J. at [13] summarised the position as follows:

> "It is common ground that cause must be shown for removal and that case-law generally on the removal of office-holders is relevant. Section 298 of the 1986 Act uses similar wording to that of s172(2) relating to the removal of a liquidator on a compulsory winding up. The question of whether to remove an insolvency practitioner of any kind must therefore be measured by reference to 'the real substantial, honest interests' of the process, and to the purpose for which the office holder is appointed: see Adam Eyton Ltd, ex parte Charlesworth (1887) 36 Ch D 299, per Bowen LJ at 306, quoted with approval in Re Edennote Ltd Tottenham Hotspur plc & Ors v. Ryman & Anor [1996] 2 BCLC 389 at 398".

53. At [14], Proudman J. went on to say that:

> "The primary purpose of the bankruptcy process is the orderly payment of creditors and the principal interest is that of the creditors".

54. At [23], Proudman J. went on to quote the following, taken again from Re Edennote Ltd; Tottenham Hotspur plc & Ors v. Ryman & Anor [1996] 2 BCLC 389, per Nourse LJ at 398:

> " … the court does not lightly remove its own officer and will, among other considerations, pay due regard to the impact of a removal on his professional standing and reputation".

55. These passages suggest to me that the power is a broad one; that the conduct of the office holder is of course material; but that ultimately the assessment is whether removal of the office holder is in the interests of the bankruptcy process as a whole. That view is supported by the comments of Neuberger J. (as he then was) in AMP Music Box Enterprises Ltd v. Hoffman [2002] EWHC 1899 (Ch), [2003] 1 BCLC 319, who at [23] spoke of the court having to "*carry out a difficult balancing exercise*". He went on (at [23] and [27]):

> "On the one hand the court expects any liquidator, whether in a compulsory winding up or a voluntary winding up, to be efficient and vigorous and unbiased in his conduct of the liquidation, and it should have no hesitation in removing a liquidator if satisfied that he has failed to live up to those standards at least unless it can be reasonably confident that he will live up to those requirements in future.
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> …
>
> On the other hand, if a liquidator has been generally effective and honest, the court must think carefully before deciding to remove him and replace him. It should not be seen to be easy to remove a liquidator merely because it can be shown that in one, or possibly more than one, respect his conduct has fallen short of ideal. Otherwise, it would encourage applications under s 108(2) by creditors who have not had their preferred liquidator appointed, or who are for some other reason disgruntled. … Further, the court has to bear in mind that in almost any case where it orders a liquidator to stand down, and replaces him with another liquidator, there will be undesirable consequences in terms of costs and in terms of delay".

The Parties' Positions

56. The Applicant's case for removal of the Trustee (which in context has to mean the current Trustee, Mr Pettit) is put forward under the following headings, which I take from Mr Miles' Skeleton Argument:

i) "*Fraud: Procuring Appointment as Trustee*". The basic allegation here is that Mr Price in various ways manipulated the conduct of the meeting on 20 July 2012 at which he was appointed, most particularly by encouraging parties who were in fact creditors of either Verdi Ferrari or of Mr Birdi's son, Kabir Virdi, to submit proofs in Mr Birdi's Bankruptcy and to vote for Mr Price.

ii) "*Fraud: Change of Trustee*". The basic allegation here is somewhat obscure, but seems to focus on the fact that since Mr Price retired from practice in January 2014, he cannot properly have made any application to appoint Mr

Pettit in May 2014. The Applicants also complain that they were not told about the change of Trustee at the time.

iii) "*Fraud: Refusal to pay dividend*". The allegation here is that since July 2017 Mr Pettit has misled creditors by saying that he could not make a distribution because of the ongoing claim against the Trustee by Mr Birdi – i.e., because of the ongoing proceedings which resulted in the trial before HHJ Eyre QC in October 2018.

iv) "*Fraud: Fabrication of costs*": This is a general attack on the Trustees' claim for *"£194,671 for 1028 hours of work … to realise 4 assets disclosed by Mr Birdi to the Official Receiver*". These figures seem to come from Mr Pettit's Annual Report for the period ending 22 May 2015, attached to which is a document entitled "*Trustees' Remuneration Schedule*". This gives a breakdown of the Trustees' work between 20 July 2012 and 22 May 2015, showing "*Total hours*" recorded by various levels of fee earner as 1,028.10 and corresponding total "*Time costs*" as £194,672.26. The gist of the complaint made is that this was and is an excessive figure, in particular because it includes "*costs involved in the unlawful takeover of Precision Engineering Ltd, unlawful entry of premises of Mr Birdi on 9 July 2013, unlawful seizure of tools of trade and engagement with bogus creditors. All of these costs must be put back into the kitty for the creditors*".

v) "*Fraud: Fabrication of documents and misrepresentations*". This is a general assertion that *"[t]he trustee*" has fabricated documents to "*prop up his story*", including the various Annual Reports to Creditors and "*Resolution of bogus creditors (sic.) meetings*" (it is not clear, but the latter seems to be a reference to the resolutions passed at the meeting on 26 June 2013 to approve the Trustee's remuneration). There is also a complaint that Mr Price "*intentionally concealed from the creditors at least 3 offers from Mr Birdi to settle debts by way of 3rd party settlement*".

vi) "*Fraud: Intentional misrepresentations*". These are sundry allegations that either in the Annual Reports to creditors or in the Defence filed in response to Mr Birdi's claim in respect of the Equipment, "*the Trustee*" made misleading statements. These are almost all concerned with the position of Precision and the seizure and sale of the Equipment.

vii) "*Fraud: unlawful seizure of tools of trade*". The allegations again relate to the seizure and sale of the Equipment, and rest on alleged findings and statements made by Newey J. in his Judgment of 20 July 2017.

viii) "*Fraud: Fabrication of creditors*". This seems to be an allegation that the only "*legitimate proven creditors*" of Mr Birdi are the Applicants; and that the "*Trustee [has] knowingly and intentionally made fraudulent claims that the proven creditors amount to some £1million*". In particular it is said that "*the Trustee has knowingly created false creditors*", and has "*fraudulently introduced and double counted creditors of [Verdi Ferrari]*".

57. As to the Trustees, they deny all such allegations of wrongdoing, however they are put. Their position, broadly speaking, is that in managing the Bankruptcy in the way they did, they were doing no more than they were properly required to do based on the information they had available. They say that Mr Birdi was evasive and that this is the true reason why costs were incurred. They say that in any event, they provided regular progress reports on the conduct of the Bankruptcy, and no-one complained at the time about how matters were being handled and about the costs incurred. They reject the idea that there was any irregularity in the way either of them was appointed, and say in any event it is now too late to complain about it. They say it is inaccurate and wrong for the Applicants to describe themselves as the only "*legitimate proven*" creditors. Other proofs of debt have been submitted totalling £1,048,373, but since there are no funds available to distribute to creditors Mr Pettit has not determined the proofs and there is no point in him doing so. In summary, their position is that it is unfortunate there is no dividend available for distribution to creditors, but that is not their fault or responsibility. It is a function of the size of the Bankrupt's available estate and of the costs they have legitimately had to incur, both in pursuing proceedings to realise assets, and latterly, to defend themselves against claims made by Mr Birdi and others relating to the estate.

Discussion and Conclusion

Overview

58. The Applicants make many detailed allegations, but it seems to me that I am faced with what is essentially a broad question, namely whether it is in the interests of the Bankruptcy process as a whole to contemplate removing Mr Pettit and appointing a new trustee at this very late stage.

59. It further seems to me that the real focus of the inquiry should be on the allegations made in relation to costs.

60. I say that because, looking at matters broadly, the variables which affect the likelihood (and size) of any distribution being made in Mr Birdi's Bankruptcy are (1) the number and value of the claims on the estate, (2) the value of the assets realised, and (3) the costs and expenses incurred in realising them.

61. As regards (1), the Trustees have not reached the position of having to determine the proofs of debt submitted by creditors for the purpose of declaring a dividend. Mr Pettit says he would only do so where there were sufficient funds in hand to make it worthwhile. It follows that under their heading "*Fraud: Fabrication of creditors*", the Applicants are simply wrong to say that the "*trustee knowingly and intentionally made fraudulent claims that the proven creditors amount to some £1million*". All he has done is to say that proofs of debt have been received which total about £1million – i.e., £1,048,373. This, and the other criticisms made under the same heading, all rest on the misconception that the submitted proofs have been finally adjudicated upon for dividend purposes. They have not been.

62. For purposes of the present analysis, however, it seems to me that such points are of secondary importance. The Applicants' complaint that they are the only "*legitimate proven*" creditors of Mr Birdi is actually something of a red herring, unless they are able to show either that there are further assets of the Bankrupt which fall within his estate which have not yet been realised, or that the costs and expenses incurred are excessive and in some way fall to be reduced. If not, then there will still be nothing available for distribution to creditors, even assuming that the Applicants are the *only* creditors entitled to make a claim.

63. As regards variable (2), the Applicants do not say that there are any as yet unrealised assets, aside perhaps from the costs orders against Mr Birdi and Mr Senna, but no one has suggested that they will tip the balance in favour of there being a surplus. Indeed, somewhat ironically, the single largest realisation for the estate so far has been the payment received by Mrs Birdi of £300,000, representing the value of Mr Birdi's half share in the matrimonial home. By means of her Application, which I will deal with below, Mrs Birdi seeks to reverse that payment, which of course would have the effect of reducing the overall value of the Bankruptcy estate, not increasing it.

64. That leaves variable (3), costs and expenses, which the Applicants do complaint about. It seems to me that unless I can see some basis for saying that such costs and expenses should be "*rescinded/revoked*", or very materially reduced, there is no point at all in removing the current Trustee and appointing a new one. To do so would leave the creditors in no better position, and would only give rise to cause further disruption and cost.

Costs & Expenses

65. The Applicants say that costs have been inflated unnecessarily and improperly, and indeed go so far as to allege (Skeleton at paragraph 53.2) that "*the Trustee has acted in his own best interests to rack up bogus costs to finance his lavish lifestyle*". They ask for Orders which "*rescind/revoke the remuneration of the Trustee*".

66. I can see no proper basis for the Applicants' complaints.

67. The starting point is that the structure of the Trustees' remuneration was approved at the creditors' meeting on 26 June 2013. As noted above, the Applicants appear to suggest that this meeting was somehow "*bogus*". I do not fully understand this suggestion and in any event reject it. Mr Pettit has exhibited minutes of that meeting, and Mr Miles himself has exhibited the relevant notice of meeting. There is no basis whatever for doubting the authenticity of any of these documents or indeed for doubting that the meeting took place and that the relevant resolutions were duly passed.

68. It is also relevant that creditors were given regular updates by the two Trustees of the course of the Bankruptcy, including as regards accumulating costs and expenses. Mr Pettit has exhibited six Annual Progress Reports, for the years 2013 to 2018 inclusive, together with proof of posting or proof of uploading onto a relevant website. These Reports included, as Ms Kyriakides has pointed out, (1) the remuneration of the Trustees and a breakdown of that remuneration in accordance with SIP 9; (2) details of Cat 1 and Cat 2 expenses; (3) a receipts and payments account; and (4) an explanation of the rights of creditors to seek clarification of the Trustees'

remuneration and expenses and to challenge the same, and the time limits for making a challenge. Yet until the present Applications, no challenge had ever been made. The Applicants' response is again to say (Skeleton at paragraph 56) that the Annual Reports were "*fabricated*". Once more, I see no basis for that assertion and I reject it.

69. The Insolvency Rules make provision for creditors to challenge a trustee's remuneration, but the challenge must be made in a timely manner, i.e., within 8 weeks of delivery of the relevant report: see Insolvency Rules 1986, Rule 6.142(1B), and Insolvency Rules 2016, Rule 18.34(3) (in force from 6 April 2017). Ms Kyriakides argued that that is for good reason, because in order for the bankruptcy to proceed in an orderly fashion, any objections should be made straightaway.

70. I agree with Ms Kyriakides. Of course, the Court has power to extend time in appropriate cases, but no application to extend time has been made and in any event there is no good reason to do so here. The Applicants complain that they never saw any of the Annual Progress Reports when they were sent, but they are entirely vague about when they did first see them, and give no explanation as to why (if they say they first saw them only recently) they apparently chose to take no interest at all in the course of Mr Birdi's Bankruptcy over the course of the last six and-a-half years. All of them submitted proofs of debt at the outset. Even if they did not receive any updates at all (which seems implausible), they could have made inquiries of their own well before now.

71. Even if that is wrong, and it is otherwise appropriate even at this late stage to conduct a review of the Trustees' remuneration, I can see no proper basis for interfering with it, and certainly not to such an extent as would enable any distribution to be made to creditors.

72. In my judgment, there is no basis for the assertion that the Trustees have incurred unnecessary costs, as part of a scheme to benefit themselves. On the contrary, the evidence shows that a great deal of time and effort has been spent in responding to the efforts of Mr Birdi and his associates to avoid engaging with the Bankruptcy process and to complicate and disrupt it. The Trustees collectively have incurred over £270,000 worth of time costs but have been able to draw down less than half of that, i.e., about £117,000. This is far less even than the £194,671 which the Applicants complain about. In the circumstances, it is obviously wrong to suggest that the Trustees have managed the Bankruptcy in a way designed to support their lavish lifestyles.

73. As noted above, the main plank of the Applicants' attack on the Trustees' costs relates to the manner in which Mr Price went about dealing with Mr Birdi's connection with Precision and the seizure and sale of the Equipment. The Applicants say *"[a]ll of these costs must be put back into the kitty for the creditors*", and in support they rely on certain alleged findings of Newey J. in his Judgment of 20 July 2017. For example, in their Skeleton (and indeed in their Witness Statements) the Applicants say:

> "At paragraph 23 of the Judgment Lord Justice Newey was scathing about Trustee misconduct confirming that Trustee unlawfully entered premises of Mr Birdi, unlawfully seized tools of trade and then recklessly sold them at an under value.

> Trustee fraudulently concealed this from the creditors because Trustee knew it makes Trustee position untenable as Trustee".

74. In fact, this is a complete mischaracterisation of what Newey J. said: his paragraph 23 did not set out any findings or views, but instead was a summary of Mr Birdi's own complaints, taken from submissions made by Mr Birdi's counsel. Moreover, the true position as regards the seizure and sale of the Equipment has now been analysed in great detail by HHJ Eyre QC, whose conclusions in his Judgment of 30 November 2018 are entirely consistent with the idea that the Trustee's costs (those of Mr Price at the time) were reasonably incurred, given the efforts made by Mr Birdi to obfuscate and confuse.

75. In his Judgment at [9]-[37], HHJ Eyre QC sets out how Mr Birdi has given confusing and inconsistent accounts over time, both as regards the Equipment and as regards his relationship with Precision. For example, in an "*assets and liabilities statement*" sent to the court in March 2012, in an effort to obtain an adjournment of the hearing of his Petition, Mr Birdi represented that he had available various items of equipment to the value of £620,000 (Judgment at [9]), but then in his Bankruptcy Preliminary Information Questionnaire, in response to the questions asking for details of "*machinery, plant and equipment*" and "*fixtures and fittings*", Mr Birdi answered "*none*" (Judgment at [11]). Likewise, Mr Birdi's initial position as regards Precision was that units 9 and 10 at Hayes Metro Centre and the Equipment had been leased to Precision, but later when seeking to argue that the Equipment represented his personal tools of trade, he said that Precision was a licensee (Judgment at [21]). Thus, as HHJ Eyre QC noted at [19]:

> "When it was put to [Mr Birdi] that he had no regard for the truth he gave a telling answer: 'my regard for the truth depends on who is sitting in front of me'".

76. That gives a flavour of what the Official Receiver and later Mr Price were presented with. Mr Price as Bankruptcy Trustee had an obligation properly to investigate Mr Birdi's affairs. Mr Birdi's behaviour can only have increased the complexity of that exercise, and the costs and expenses incurred should be looked at in the light of such factors. Some other examples of Mr Birdi's behaviour are given by Mr Pettit in his First Witness Statement. He describes Mr Price's early investigations having revealed:

> " … among other things, that Mr Birdi had nine bank accounts, which he had not disclosed. These showed numerous substantial transfers of money that had been made not long before his bankruptcy. Investigations had to be made to ascertain what the transfers were for, in respect of which I am informed by Mr Price, he did not receive much co-operation from Mr Birdi. Likewise, it was discovered that Mr Birdi had not disclosed in his PBIQ a substantial debt, which in one of his public examinations he revealed was owed to him by a Mr Bhandal".

77. The matter does not end there. One cannot sensibly stop the clock and look only at the £194,672.26 of time costs incurred as at 22 May 2015. In assessing at this stage the utility of appointing a new trustee one must look at the overall costs and expenses (including Trustees' fees) incurred to date. These obviously include costs and expenses incurred not only in gathering in Mr Birdi's assets (such as those relating to the Possession Proceedings, which proceeded to trial in 2016), but also in defending and dealing with the various adverse claims brought against the Trustees (and others) by Mr Birdi and Mr Senna, *viz*.:

    i) The Injunction Proceedings, launched shortly before the trial in the Possession Proceedings, which in his Judgment HHJ Eyre QC expressly found were brought by Mr Birdi "*in an attempt to forestall possession proceedings against his matrimonial home*" (see at [15]).

    ii) The two further sets of proceedings, commenced in November and December 2016, which were almost entirely struck out or dismissed by Newey J. in early 2017.

    iii) The trial before HHJ Eyre QC in October 2018, which resulted in his Judgment mentioned above.

78. Looking at the matter in the round, there is little doubt that this is a case in which by one means or another Mr Birdi, with the assistance of others, has gone to extraordinary lengths to complicate and indeed prolong the administration of his Bankruptcy estate. In this regard I should say that I attach no weight to what the Applicants have sought to characterise as "*offers*" from Mr Birdi, in letters they have exhibited dated 7 January 2013, 28 February 2018 and 29 July 2013. On examination, as Ms Kyriakides points out, these are not offer letters at all but requests for information. In his First Witness Statement Mr Pettit accepts that other letters amounting to offers were received by Mr Price, but goes on to say that Mr Birdi never provided funds or evidence of any funds to settle his liabilities. In the circumstances, and in light of the other evidence available as to Mr Birdi's patterns of behaviour, it seems to me impossible to conclude that pursuing those offers would have resulted in any, or any material, cost saving for the estate.

79. It follows that I see no merit at all in the Applicant's core complaints under the headings "*Fraud: Fabrication of costs*" and "*Fraud: Fabrication of documents and misrepresentations*".

Other Complaints

80. Many of the Applicants' other complaints and allegations of wrongdoing are tied up with the overall question of costs, and in particular the costs associated with realising the value of the Equipment, and dealing with the subsequent litigation brought by Mr Birdi flowing from that. None of these allegations is sustainable. I deal with the main points below, again using the broad headings from Mr Miles' Skeleton:

    i) "*Fraud: Refusal to pay dividend*". The allegation here is misconceived. It is said that Mr Pettit has misled creditors by saying he could not make a distribution because of the ongoing claim by Mr Birdi. In fact, it is impossible to identify any such statement and no particulars of it have been given. Mr

Pettit has said (accurately) that there are no further assets to realise (2018 Annual Report at paragraph 6.3), but that seems to be common ground. There is nothing in the further point that Mr Pettit has "*siphoned off money from the bankruptcy estate to finance his defence*" in the claim relating to the Equipment. Such costs obviously fall to be borne by the estate, and indeed HHJ Eyre QC gave a specific direction to that effect at a hearing on 30 November 2018.

ii) "*Fraud: Intentional misrepresentations"*. The allegations here are essentially that Mr Price made "*wild bogus claims*" about Mr Birdi's relationship with Precision and his entitlement as Trustee to seize and sell the Equipment. For an answer one need again look no further than the Judgment of HHJ Eyre QC and his conclusion that Mr Price acted entirely reasonably in connection with the Equipment, given the confusing and indeed misleading picture presented to him by Mr Birdi.

iii) "*Fraud: unlawful seizure of tools of trade*". The allegations here rest on a mischaracterisation of what Newey J. decided in his Judgment of 20 July 2017. He did not make any findings of fact. It is very difficult to see how the Applicants can have thought he did, still less that such findings included a determination that " *... the Trustee fraudulently entered the premises of Mr Birdi on 9 July 2013, 5 days after discharge from bankruptcy, unlawfully seized tools of trade and then recklessly sold them*" (Skeleton at paragraph 61). Newey J. made no such determination. On the contrary, he dismissed all Mr Senna's claims, and allowed only certain narrow claims by Mr Birdi to continue. They have now been dealt with by HHJ Eyre QC and dismissed.

81. In all these circumstances, and given that I see no basis for the Applicants' criticisms of the way in which the Trustees have managed the Bankruptcy, and no basis on which the costs they have incurred can sensibly be criticised, it follows that I see no grounds for removing the present Trustee and replacing him with another office holder. Such a step would serve no useful purpose at all, and would only give rise to yet further delay, disruption and cost.

Appointment of the Trustees

82. Is that conclusion affected by the criticisms made of the manner in which the two Trustees came to be appointed? In my view, the answer is no.

83. Dealing first with Mr Pettit, the current Trustee, although the Applicants' complaint is put forward under the heading "*Fraud: Change of Trustee*", it is very difficult to see what the alleged "*fraud*" is said to have been. It seems to be based on the assumption that because the previous Trustee, Mr Price, retired from his practice in January 2014, he cannot have made any application to have himself replaced by Mr Pettit in May 2014, at the time of the Block Transfer Order. If that is the allegation, it is obviously misguided, since it confuses Mr Price's retirement from his practice with his continuing status as office holder. It is quite clear from the terms of the Block Transfer Order dated 22 May 2014 that Mr Price continued as Mr Birdi's Trustee in Bankruptcy until that date, when he was removed and replaced by Mr Pettit. The Application Mr Price made for his removal was made by him in that capacity.

84. The Applicants also say that the Block Transfer Order was not published in The Gazette and that in any event they were not told about it. There is nothing in these points. Mr Pettit has exhibited an extract from The Gazette giving notice of the change of Trustee in respect of Mr Birdi's Bankruptcy. He has also exhibited a copy of the Annual Report for the period to 22 May 2014, which contains a special notice stating: "*Pursuant to an Order of the High Court dated 22 May 2014 Mr Price has been replaced as office holder by Mr Gary Stephen Pettit*". This satisfied the requirement in paragraph 11 of the Order that " *... this Order and its effects shall be specifically drawn to the attention of Creditors in the office holders' next report to Creditors*".

85. As to Mr Price, the original trustee, the allegations as regards his appointment are different. They are made under the heading: "*Fraud: Procuring appointment as Trustee*". The Applicants' case concerning Mr Price was developed initially in Mr Miles' Second Witness Statement at paragraphs 8-12. A number of Mr Miles' points were difficult to follow, for example the allegation in paragraph 8 that:

> "In or around July 2012, the Trustee solicited the petitioning creditor of Verdi Ferrari After Sales Ltd (VFAS – in liquidation) to attend the first creditors meeting with the Official Receiver to unlawfully procure appointment as Trustee by misappropriating the proxies and voting rights of Max Donnelly £21,192".

86. It will be recalled that Verdi Ferrari was the company owned by Mr Birdi's son, which was wound up by Order of the Court on 11 December 2011.

87. During the course of the hearing, the picture became clearer in relation to this group of allegations. The nub of the complaint is that certain creditors who were properly to be regarded as creditors of Verdi Ferrari or of Mr Birdi's son, Kabir Virdi, had improperly been persuaded by Mr Price to submit proofs of debt in the Bankruptcy of Mr Birdi instead. Mr Price, it was said, had thereby improperly manipulated the process and engineered his own appointment, in the sense that a majority of the creditors by value voted for him and not for Messrs Grant and Stevens of Wilkins Kennedy.

88. As matters developed at the hearing, the key allegations were in relation to Max Donnelly, Randal Hockey, Sean Downes and Craig Swenden (or Sweden). In the "*List of Proofs & Proxies*" produced for the meeting on 20 July 2012, the values attributed to their proofs were as follows: Mr Donnelly, £21,192; Mr Hockey, £45,326.12; Mr Downes, £37,995; and Mr Swenden (or Sweden) £48,410.00. (I should mention for completeness that at one stage the allegations of misconduct at the meeting included an allegation that the "*proxies and voting rights of Antony Antoniades*" had been misappropriated. During the course of the hearing I was shown an unsigned Statement of Mr Antoniades, saying that he had opposed the appointment of Mr Price as Trustee. However, I attach no weight to that Statement because (1) it is unsigned, (2) the assertion made in it is inconsistent with the contemporaneous documents, and (3) Mr Antoniades' Application was dismissed by consent and he has played no part in the proceedings).

89. A number of documents were produced by the Applicants in support of this part of their case, including:

    i) As regards Mr Donnelly, the Order for the winding up of Verdi Ferrari made by Registrar Derrett on 19 December 2011. This shows that the Order was made "*UPON THE PETITION OF MAX DONNELLY creditors (sic.) of the above company presented to this Court on 19 September 2011*".

    ii) As regards Mr Hockey, a copy of (1) an Order of District Judge Devlin dated 22 June 2012, giving him leave to withdraw a Petition presented by him for the bankruptcy of "*Kuldip Birdi Also Known As Kuldip Virdi*", but also (2) a bankruptcy Order dated the same day against Kabir Virdi (Mr Birdi's son), naming Randal Hockey as Petitioning Creditor.

    iii) As regards Mr Downes, a copy of an email exchange he had with Ursula Weilgolsz at the Official Receiver's office in February 2012. Ms Weilgolsz in her email of 7 February 2012 said she was dealing with the liquidation of Verdi Ferrari; Mr Downes in his email to her dated 8 February 2012 said: "*I have not received any payment whatsoever from the forty thousand pounds sterling owed me by Verdi!*".

    iv) As regards Mr Sweden or Swenden, a copy of a Statutory Demand by him dated 9 December 2011, claiming payment of £47,000 from Verdi Ferrari.

90. The Applicants also produced copies of some recent email exchanges between Mr Senna and Mr Donnelly, Mr Hockey, and Mr Sweden (or Swenden). The email from Mr Donnelly dated 21 January 2019 represents the high-water mark:

> "Alan Price told me about the creditors meeting at the office of the official receiver in 2012 and told me to vote for him. I asked if this was legal because I was already a creditor in the liquidation of Verdi's company. Alan Price told me he will make it legal but after he got appointed even he disappeared and I have not heard anything for the past 5 years."

91. What to make of all this? The Applicants say it is evidence of "*fraud by Alan Price for soliciting creditors to procure an appointment*", presumably as part of the larger scheme that he had to benefit himself personally by incurring unnecessary costs in administering Mr Birdi's estate.

92. In my view, the documents relied on by the Applicants do not support such a conclusion. They are more consistent with the idea that customers at the time were confused and uncertain about exactly which party they were contracting with. That seems to me understandable, in circumstances where there were apparently a number of businesses operating from the same premises more or less simultaneously.

93. The overall picture on the documents is unclear. For example:

    i) Another of the documents attached to the Applicant's Skeleton is an undated note headed "*Creditor Listing for Kuldip Singh Birdi*". In the column headed "*SOA Amount*" – which I interpret to mean, amounts taken from Mr Birdi's

own Statement of Affairs – this lists Messrs Donnelly. Hockey, Downes and Sweden as creditors of Mr Birdi, for amounts identical to those recorded in the "*List of Proofs & Proxies*" produced for the creditors' meeting on 20 July 2012 at which Mr Price was appointed. That is consistent with Mr Birdi himself having thought the relevant individuals were all his creditors and having said so in his Statement of Affairs. A further copy of this undated note is exhibited by Mr Price, as an attachment of a letter from him to Mr Birdi dated 1 March 2013.

ii) On the other hand, the Applicants' Skeleton also attaches an email dated 3 July 2013 from a Nicola Layland of Portland Business Support and Advice. It seems she was involved in the liquidation of Verdi Ferrari. Her email sets out a "*list of creditors*" of Verdi Ferrari, which includes claims by Mr Downes, Mr Donnelly and Mr Hockey (but not Mr Sweden or Swenden), for amounts similar to (but not the same as) those contained in the "*Creditor Listing*" document above, and in the "*List of Proofs & Proxies*".

iii) Yet another summary of Mr Birdi's creditors is attached to a letter from Mr Price to Mr Birdi dated 12 August 2013. This has a column headed "*Submitted Claim*", which again shows Messrs Donnelly, Hockey, Downes and Sweden as claimants, all for the same amounts as in the "*List of Proofs & Proxies*" document. However, the same document also has a separate column headed "*SoA/Claim Amount*", which lists Messrs Donnelly, Hockey and Downes as creditors, but not Mr Sweden. On the face of it, therefore, this is inconsistent with the record in the "*SoA Amount*" column in the "*Creditor Listing*" document at (i) above.

94. The picture which emerges from this, consistent with other evidence of how Mr Birdi arranged his business affairs, is one of understandable confusion, and of creditors not being at all clear whom they properly had claims against. That interpretation is supported by the following extract from Mr Price's letter to Mr Birdi dated 12 August 2013:

> "You ask about an 'amicable settlement figure'. The overall position as regards your creditors' claims is however at present unclear. There are a number of creditors who appear to have claims against both your estate and [Verdi Ferrari], and possibly even other third party companies. These claims arise in respect of transactions originally carried out when [Verdi Ferrari] was trading but which could attract liability on your part because of confusion over whom the customers were dealing with, dishonoured cheques or claims under the principles of the judgment in Roder v. Titan Marquees (2011). I have not commenced dealing with the bulk of creditors' claims for dividend purposes yet and will not do so until I have sufficient funds in hand to guarantee a dividend being paid".

95. In those circumstances, I do not see the documents relied on by the Applicants as supporting a case of fraud. All one can say with certainty is that some creditors seem to have made claims against different debtors, perhaps with the encouragement of Mr Price. Their precise motivations are somewhat obscure at this distance of time, but it seems very likely they were doing no more than hedging their bets because of uncertainty about who their true debtor was, and thus trying to preserve whatever claims they did have, which would fall to be finally adjudicated on for dividend purposes at some future time. I have seen nothing to suggest that anyone knowingly made claims with a view to obtaining an illegitimate double-recovery. As to later events, of course as far as Mr Birdi's Bankruptcy is concerned, final adjudication of proofs has not happened because there has never been a realistic possibility of a dividend and hence the practical need has never arisen. I have no information about the liquidation of Verdi Ferrari or Kabir Virdi's bankruptcy, but the recent emails attached to the Applicants' Skeleton suggest that none of the four relevant creditors has ever received anything from anyone. Thus, there is nothing to suggest that any of the creditors has actually been paid out twice, and knowingly kept payments they were not entitled to.

96. The Applicants' complaints fail to recognise that admission of the proofs for voting purposes at the 20 July 2012 meeting was not and was not intended to be a final determination of their legitimacy. Admission of proofs for voting at the meeting was a matter for the Chair, Janet Hallamore of the Official Receiver's Office. I can see no basis at this stage for entertaining a challenge to the decisions she made. I note again that the Insolvency Rules 1986 provided a specific mechanism for challenge via an appeal within 21 days (Insolvency Rules 1986, Rule 6.94). No appeal was brought, and in all the circumstances it is far too late now for the Court to contemplate extending time.

97. It follows that I reject the Applicants' criticisms of the appointment of Mr Price. In any event as I see it, the question for me at this stage is whether the available evidence about Mr Price's appointment gives rise to sufficient concern to justify removing Mr Pettit, given that no-one is saying there are further assets to realise and there are no grounds for unwinding or materially reducing the Trustees' fees incurred so far. I do not think so. Such a step would not be in the interests of the Bankruptcy process as a whole.

Should an Order be made requiring Mr Pettit to convene a creditors' meeting?

98. The Applicants' alternative case is that the Court should require Mr Pettit to convene a creditors' meeting to consider and approve a resolution for his removal. Their position seems to be that the notices contained in their complaint letters sent in August and September 2018 satisfied the statutory requirements, and that accordingly the Court should require Mr Pettit to convene a meeting.

Law

99. It is useful to set out again the text of IA section 298(1):

> "Subject as follows, the trustee of a bankrupt's estate may be removed from office only by an order of the court or by a decision of the bankrupt's creditors made by a creditors'

> decision procedure instigated specially for that purpose in accordance with the rules."

100. Under IA section 298(4), where (as in this case) a trustee is appointed by the Court, a creditors' decision procedure may be instigated for the purpose of removing him only if either (a) the trustee thinks fit, (b) the court so directs, or (c):

> "… one of the bankrupt's creditors so requests with the concurrence of not less than one-quarter, in value, of the creditors (including the creditor making the request)."

101. A request under IA section 298(4)(c) qualifies as a "*requisitioned decision*" under the Insolvency Rules 2016 ("IR"), Rule 15.18(1). Certain procedural requirements are therefore imposed by Rules 15.18 and 15.19.

102. Rule 15.18(3) says that the request for a requisitioned decision must include a statement of the purpose of the proposed decision and either (a) a statement of the requisitioning creditor's claim together with (i) "*a list of the creditors … concurring with the request and of the amounts of their respective claims*", and (ii) confirmation of concurrence from each creditor; or alternatively (b) a statement of the requesting creditor's debt and that that alone is sufficient without the concurrence of other creditors.

103. Rule 15.19(1) requires the convenor (here Mr Pettit), within 14 days of receiving a request, to provide the requesting creditor with itemised details of the sum to be deposited as security for payment of the expenses of such procedure. Rule 15.19(2) provides that the convenor is not obliged to initiate the decision procedure until either the convenor has received the required sum or the period of 14 days has expired without him having informed the requesting creditor of the sum required.

104. On the face of it, if the relevant formalities are complied with, the convenor is under an obligation to comply. Thus, although Rule 15.19(2) talks of the convenor having no obligation to initiate the decision procedure if the required sum is *not* paid, it would seem to follow from that that if it *is* paid, an obligation then arises.

105. Ms Kyriakides however has drawn my attention to two authorities which suggest that, although the duty is expressed in mandatory terms, in fact the Court has power to override the convenor's obligation (even if it has arisen) and direct him not to comply with it. In Re Barings (No. 6) [2001] 2 BCLC 159, Sir Andrew Morritt V-C held that although section 168(2) IA imposed a duty on the liquidator to whom a requisition was addressed to summon a meeting, the court had jurisdiction to override that duty (see at [43]). That involved the Court making an assessment of whether the proposed meeting (see at [47]):

> " … will be conducive to both the proper operation of the process of liquidation and to justice as between all those interested in the liquidation".

106. On the facts, that test was not met and so no meeting was convened. Similarly in Managa Properties Ltd v. Brittain [2009] EWHC 157 (Ch), [2010] Bus LR 599, a case dealing with IA section 172, it was held (at [17]) that even where 25% or more of the creditors by value concurred:

> " … the court is not obliged to direct the liquidator to call a meeting. The court may take the view that it would not be in the interests of the liquidation for such a meeting to be held. It might serve no other purpose other than to waste costs".

Discussion and Conclusion

107. In my judgment the relevant formalities under the Insolvency Rules have not been complied with, and so Mr Pettit is under no obligation to convene a creditors' meeting.

108. I say that for the following reasons:

i) Proofs of debt have been submitted with a total value of £1,048,372.79. The debts of the three Applicants together total only £189,983, or approximately 18% of the total proofs by value. It seems to me consistent with the fact that Mr Antoniades' application has been withdrawn that his debt should be excluded from the calculation, but even if it is included, the total still only comes to 23.64% in value of the overall claims. In saying this I am conscious that I am taking into account all the proofs lodged, notwithstanding the fact that the Applicants maintain that some or all are "*bogus*". But it seems to me right to do so, in circumstances where no proofs have finally been adjudicated upon by the Trustees.

ii) In any event, IR Rule 15.18(3) mandates that the request to requisition a meeting must contain a list of the concurring creditors and of the amounts of their respective claims, together with confirmation of concurrence from each contributor. The original request was set out in Mr Miles' complaint letter dated 20 August 2018, but after referring to his own claim of £49,772, all he went on to say was: "*I know that the other creditors in the value of £200,000 will concur and make the same request as mine*" (emphasis added). I think Ms Kyriakides is right to say that that does not satisfy the test. No list was included or attached, and saying that other creditors "*will*" concur is not at all the same as providing "*confirmation of concurrence*", which to my mind means confirmation of actual, present concurrence not possible future concurrence.

iii) This conclusion is not affected by the later letters sent by the other Applicants. Mr Antoniades' letter of 28 August 2018, Mr Noah's letter of 31 August 2018, and Mrs Birdi's letter of 7 September 2018 all confusingly said: "*In accordance with Section 298(4)(c) Insolvency Act, I served proper notice that as a creditor I required Trustee to convene a general meeting of creditors …*". The Trustees' position is that no such notices have ever been served, and the Applicants have not pointed to any, aside from Mr Miles' letter. The most that can be said is that one should look at the four letters together as a group, and that taken together they constitute a "*list*" of concurring creditors and together provide sufficient "*confirmation of concurrence*" from each creditor. I do not

accept that argument, which seems to me to cut across the wording of Rule 15.8(3). In requiring a "*list*", this contemplates a single document in which the relevant creditors and the amounts of their claims are set out. I do not think the Rules are intended to work in a manner which requires a list to be constituted by the convenor from different communications delivered by different creditors at different times.

iv) Even if that is wrong, the 14 day period for Mr Pettit to provide itemised details of expenses can only have started to run from the date of receipt of the final communication in the chain, namely Mrs Birdi's letter of 7 September 2018. On 13 September 2018, Ashteds solicitors on behalf of Mr Pettit wrote identical letters to Mr Miles, Mr Antoniades, Mr Noah and Mrs Birdi to say that, despite having received requests from only the (then) four Applicants, Mr Pettit would be content to call a meeting if (amongst other things) he was given confirmation that those requisitioning the proposed meeting would pay the associated costs (which he estimated at £1,500 plus VAT for a virtual meeting or £3,000 plus VAT for a physical meeting). No such confirmation was given and no funds were paid, and consequently, even on the hypothesis that the other relevant formalities have been complied with or waived, Mr Pettit came under no obligation to convene a meeting.

v) I should add for completeness that Ashteds in their letter sought a further confirmation, namely that the Official Receiver would be willing to take over from Mr Pettit. That is not directly a requirement under the Insolvency Rules, but reflected an understandable concern. That is because, by IA section 298(4B), where a decision is made to remove a trustee under subsection (4), the decision does not take effect until the Bankrupt's creditors appoint another person as trustee in his place. Mr Pettit was no doubt worried about being left in an uncomfortable state of limbo, if a meeting were held which resolved to remove him but in circumstances where no-one else was available to take over. Given the state of the Bankruptcy proceedings overall, and their history, it must be highly doubtful that any private trustee would be willing to step in; and so the Official Receiver was the only realistic alternative. In fact. in an email to Ashteds dated 12 September 2018, Mr Turek on behalf of the Official Receiver had already indicated to Ashteds that the Official Receiver did not wish to be appointed in place of Mr Pettit.

109. Even if the above analysis is incorrect, and Mr Pettit is under an obligation to convene a meeting, it seems to me that this is a case in which the Court should intervene and override that obligation. I say that because, in light of the conclusions expressed in the previous section of this judgment, I cannot see that there would be any practical utility in forcing a change of trustee at this very late stage. In reality, nothing is left to be done except for Mr Pettit to collect on the costs Orders made for the benefit of the estate. Changing trustees now would only serve to create unnecessary work and waste costs, and in my view cannot be justified. In any event, no replacement trustee is available for any meeting to appoint.

The Application for a Declaration by Mrs Birdi

110. I come back to Mrs Bridi's Application for a declaration that the £300,000 she paid for Mr Birdi's share in the matrimonial home be revoked or rescinded.

111. No basis for this declaration is set out in Mrs Birdi's Application Notice. The matter is touched on only lightly in her Witness Statement, where among the "*Issues to be decided*", she lists:

> "Examine the evidence that the Trustee knowingly and intentionally pursued course of action including fraudulently obtaining the order to pay Trustee £300,000 in the possession proceedings brought by the Trustee against myself".

112. No further particulars are given and the point is not developed.

113. Since I have been shown nothing which would justify Mrs Birdi's claim for a declaration, it is dismissed.

Conclusion & Disposition

114. In my judgment, and for all the reasons given above, the Applications should be dismissed in their entirety. For the avoidance of doubt, that includes:

i) Dismissal of the Applications as against Mr Pettit's firm, PBC, which is named as a Respondent by Mr Miles and Mr Noah, but as against which no relief is sought.

ii) Dismissal of the Applications as against the Official Receiver.

iii) Dismissal of the claim at paragraph 1(ii) of Mrs Birdi's Application Notice, i.e., her request for an Order "*to rescind/revoke the appointment of Trustee*".

iv) Dismissal of the claim at paragraph 1(iv) of Mrs Birdi's Application Notice, i.e., her request for an Order " … *to restrain the bogus creditors Donelly (sic.), Hockey and others to make any claim*".