Neutral Citation Number: [2020] EWHC 1071 (Ch)

Case No: 166 and 167 of 2015

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
INSOLVENCY AND COMPANIES LIST (ChD)

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 4 May 2020

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

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Between :

(1) NIHAL MOHAMMED KAMAL BRAKE **(2) ANDREW YOUNG BRAKE** **(as trustees of the Brake Family Settlement)** **(3) NIHAL MOHAMMED KAMAL BRAKE** **(4) ANDREW YOUNG BRAKE**	**Applicants**
- and -	
(1) DUNCAN KENRIC SWIFT **(as trustee of the estates of Nihal Brake and Andrew Brake)** **(2) THE CHEDINGTON COURT ESTATE LIMITED**	**Respondents**

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Stephen Davies QC and Daisy Brown (instructed by **Seddons LLP**) for the **Applicants**
Andrew Sutcliffe QC and William Day (instructed by **Stewarts Law LLP**) for the **Second Respondent**
The First Respondent was not present or represented

Hearing date: 1 May 2020

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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.

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Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii on the date shown at 11:10 am.

HHJ Paul Matthews :

1. This is my judgment on an ordinary application made by the second respondent by application notice dated 9 April 2020. That ordinary application is made in the context of an original insolvency proceeding commenced on 12 February 2019. This has been known (and I will refer to it) as the Bankruptcy Application. Parts of that proceeding were struck out by me on 2 and 3 March 2020, but the remaining part is listed for trial beginning on 13 May 2020. That remaining part concerns an application by the applicants for an order that their interests in certain assets, namely a cottage and an adjacent strip of land (referred to as "the ransom strip") have revested in them (or one of them) under section 283A of the Insolvency Act 1986. This part of the Bankruptcy Application is made on the basis that those assets comprised the applicants' principal or only residence as at 12 May 2015, the date of their bankruptcies. The second respondent's application was first before the court at the pre-trial review on 24 April 2020, but I directed that, because it needed more time, it be heard on 1 May 2020. I am giving judgment as quickly as I can because the trial is listed to take place in the next two weeks. It was sent out in draft on 2 May, and I am handing it down formally today.

2. Before I describe the order sought in the application, I will briefly give some background. As I have said, the Bankruptcy Application was begun by the applicants, Mr and Mrs Brake, on 12 February 2019, against Duncan Swift, the first respondent (then the only respondent), who was their former trustee in bankruptcy. It concerned the actions of the trustee in bankruptcy in dealing with the assets already mentioned, in late 2018 and early 2019. The applicants were adjudicated bankrupt on 12 May 2015, and came out of bankruptcy one year later. The applicants had been made bankrupt as a result of orders made against them for costs in an arbitration between them and their former partner (a limited partnership called Patley Wood Farm LLP, whose principal was a lady called Lorraine Brehme). The partnership (known as "Stay in Style") had gone into liquidation and there was an argument over whether the cottage, which had been a partnership asset contributed by the applicants, had become part of the liquidation estate. The ransom strip had belonged to the first applicant and was not a partnership asset, so had vested in the first respondent as trustee in bankruptcy. In brief terms, the first respondent purported to buy the liquidators' interest in the cottage from them and sell it on, under a conditional contract, to the second respondent. He also sold the ransom strip to the second respondent. It is these dealings with the cottage and the ransom strip which the applicants seek to impugn in the proceedings.

3. Also on 12 February 2019, the applicants issued another proceeding against the first respondent, seeking his removal from office as trustee in bankruptcy. This is referred to as the Removal Application. On 10 April 2019 Mr John Jarvis QC, sitting as a deputy High Court judge, by consent joined the second respondent as a party to the Bankruptcy Application. Since it was a consent order, it has never been appealed, and no application has been made since to vary it or set it aside. On 6 June 2019 Mr Jarvis QC in the Removal Application made another order by consent, removing the first respondent from office. Five days later, on 11 June 2019, again in the Removal

Application he appointed Messrs Gostelow and Nimmo as replacement trustees in bankruptcy.

4. Because it figures briefly in the story, I mention that there was another original insolvency proceeding issued by the Brakes, against the liquidators of the partnership. This was known as the Liquidation Application. I struck it out on 3 March 2020.

5. In addition to the legal proceedings already described, there are yet further proceedings known as the Eviction Proceedings. These were commenced by claim form issued by the applicants and their son on 3 April 2019 in the County Court at Yeovil against The Chedington Court Estate Ltd. In those proceedings, the claimants claim to be collectively entitled to exclusive possession of the cottage. They allege that the defendant (*ie* the second respondent in the Bankruptcy Application) forcibly excluded the claimants from that property on 18 January 2019, thereby preventing them from recovering their personal chattels which were then present there. This claim was transferred from Yeovil to the Business and Property Courts in Bristol in July 2019.

6. In December 2019 Mr John Jarvis QC, sitting as a deputy High Court Judge, considered the listing of the Bankruptcy Application, the Liquidation Application, and the Eviction Proceedings. Chedington submitted that it would be better to try all these proceedings together in May 2020. On the other hand, the Brakes argued that it would be better to stay the Eviction Proceedings, and try only the other Applications then. The judge preferred the approach of the Brakes, and imposed a stay on the Eviction Proceedings pending trial of the Bankruptcy and Liquidation Applications.

7. On 30 January 2020 the second respondent issued an ordinary application notice for an order striking out most of the Bankruptcy Application, and all the Liquidation Application, on the grounds that the applicants lacked standing to make them, as they had no economic interest in the outcome of either the liquidation or the bankruptcy. On 2 and 3 March 2020 I heard this and other applications, and gave an extempore judgment striking out most of the Bankruptcy Application (and all the Liquidation Application) for lack of standing. The only relevant part of the Bankruptcy Application left (which was not the subject of the strike-out application) was the revesting (section 283A) issue. This was agreed to involve broadly three points: a legal issue as to whether a proprietary estoppel claim as yet unvindicated and not declared by the court to exist could be an interest in land for the purposes of section 283A, a factual point as to whether the cottage was the applicants' principal or sole residence on 12 May 2015, and a question of mixed law and fact as to whether the ransom strip could be a dwelling-house for the purposes of the section. I mention in passing that I gave permission to appeal against the strike-outs, and I understand that that appeal now has a "hear-by" date of 2 November 2020.

8. On 13 March 2020 the applicants made an informal application to lift the stay on the Eviction Proceedings, and to list a preliminary issue in the section 283A application regarding the validity of a licence purportedly granted by the first respondent to the second respondent to occupy the cottage. They also issued an ordinary application notice for an order staying or adjourning the trial of the section 283A issue, on the grounds that the second respondent had no legitimate interest in that issue.

9. I considered these applications on paper (as I was requested to do), and gave a written judgment on 23 March 2020. I allowed the lifting of the stay on the Eviction Proceedings, on certain conditions, but I otherwise dismissed the applications, on the basis (inter alia) that the question of the second respondent's interest could not be dealt with summarily on the papers. I said:

> "37. On the merits of the application, Mr Day [counsel for Chedington] deals with each of the three grounds put forward by the Brakes (in summary) as follows. First, whether Chedington has a legitimate interest in the section 283A issue is a question which cannot be dealt with summarily in the way desired by the Brakes. It must be tried, and therefore the May trial (at which it will be dealt with) should not be stayed. Second, the Brakes assume both that their appeal will succeed and that then their summary judgment application will also succeed. But this is not self-evident, not even after reading the Brakes' skeleton arguments. Chedington unsurprisingly disputes the Brakes' analysis. Third, the prediction (if it be correct) that a party will appeal a decision that goes against it is not a good reason to adjourn the hearing of that issue before the decision can be made.
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> 38. On each of these three points, I think Chedington is right. Having re-read the Chedington skeleton dealing with the matter, I consider that the question whether Chedington has a legitimate interest in the section 283A issue is a matter of some importance, which cannot be dealt with by a brief side-wind (and especially not just on the papers) on the way to deciding to stay or adjourn the determination of that issue. It needs a full trial."

10. Accordingly the trial of the section 283A issue was still to go ahead in May, and (as I then thought) to include the question of the second respondent's standing to oppose the applicants' claims under section 283A. On 6 April 2020 I refused the applicants permission to appeal from my decision of 23 March 2020, on the grounds that none of the six grounds of appeal advanced had any real prospect of success.

11. On 9 April 2020, the second respondent issued another ordinary application notice – the one I am now considering – for (1) a declaration as to its standing in the section 283A application, alternatively (2) permission to serve a further witness statement and an extension to the time estimate for trial to 4 days, (3) an order striking out certain passages in the applicants' evidence, and (4) an order for certain disclosure by the applicants. This application was raised at the PTR, which I conducted by telephone on 24 April 2020. Written skeletons were provided to me by the parties. However, I was concerned that the question of the second respondent's standing could not be dealt with in the limited time available for the PTR, and adjourned consideration of this issue to 1 May 2020, when a further telephone hearing took place, following exchange of further skeleton arguments.

12. The position of the first respondent Mr Swift was also discussed at the PTR on 24 April. His position is that he describes himself as neutral in the section 283A application, and does not intend to appear at the trial *as a party*. Nevertheless, he has made a witness statement dealing with various aspects of his conduct, and intimated his willingness to give evidence at trial if called. The second respondent has indicated its intention to call him to give evidence.

13. At the telephone hearing on 1 May the second respondent made five main submissions in support of the application for a negative declaration. These can be summarised for present purposes as follows:

1. The second respondent was joined as a party to the Bankruptcy Application by order of Mr Jarvis QC in April 2019, by consent. No condition was imposed upon such joinder that the second respondent should go on to prove its title at trial. If there had been an opposed application under CPR rule 19.2(2), the second respondent would still have been joined, because it claimed to be a successor in title to the first respondent: see *Hunt v Conwy County Borough Council* [2015] EWHC 3072 (Ch), [27], [38] (discussed further below). It is enough that it makes that claim, and it does not have to go on to prove it at the trial.

2. The 'legitimate interest' test established by the case law, represented by cases such as *Deloitte & Touche AG v Johnson* [1999] 1 WLR 1605, PC, *Re Edennote Ltd* [1996] BCC 718, CA, and *Mahomed v Morris* [2001] BCC 233, CA, only applies to *applicants* in insolvency proceedings, and not to respondents. *Re Loquitor* [2002] EWHC 430 (Ch) relied on by the applicants, is not an exception to this, because it was the respondents to the main insolvency application who were making ordinary applications in those proceedings, and it was their standing as such *applicants* that was being challenged.

3. In any event, the second respondent is directly affected by the relief sought, as was the landlord in *Re Hans Place Ltd* [1992] BCC 737, where a liquidator disclaimed an onerous lease, which meant that the landlord ceased to be, or could not be, a creditor in the liquidation and, therefore, his financial interests *in the liquidation* were affected. The second respondent would be directly affected by the revesting of the cottage and the strip in the applicants, because it claims to have acquired such interests as the first respondent had in them, but the applicants claim that they have a prior right to the revesting of such assets in them.

4. There is no authority in law for the applicants' submission that the test for standing for the second respondent is whether it is a *bona fide* purchaser for value without notice. In any event, this cannot apply now that the applicants' case in impugning the transactions in January 2019 concerning the cottage and the strip has been struck out.

5. It would be an abuse of process for the applicants to object to the second respondent's participation in the section 283A proceedings. This is because any such objection should have been taken at the time of joinder on 10 April 2019. It is also because to bring this issue into the trial of the section 283A issue would be a collateral attack on the decisions which I made on 2 and 3 March 2020. The complaints about the actions of the liquidators of the partnership and the first respondent in selling the cottage to the second respondent in January 2019 were struck out at that hearing, and they should not be allowed to be made again in relation to the section 283A issue.

14. In response, the applicants made a number of points, which I summarise as follows:

15. (1) A party joined under CPR rule 19.2 is joined in order to run a particular case. Once joined, that party makes that case. This is what Mr Jarvis QC was referring to in April 2019 when he said that the second respondent wished to "sit on its title". Making a claim in order to be joined only gets you through the gateway. It is not the

end of the process but only the beginning. If the applicants were not permitted to take the point about standing earlier, then it had to be dealt with at the trial.

16. (2) In order to be joined under rule 19.2 it is only necessary to show that your rights *may* be affected. The *Hunt* case (which I deal with in more detail below) illustrates that a person who ceases to have an interest in the dispute should not be a party, in that case the Attorney General: see at [18]-[19]. If a person does not claim title, he or she should not be a party. But if a person does claim title, the claim must be resolved.

17. (3) The applicants' Reply still contains allegations that the transaction was either void or voidable, and that the contract for services entered into by the first respondent was ultra vires. So these issues are still live. They should be tested at the trial.

18. In response to Mr Sutcliffe's five submissions, Mr Davies argued (in summary):

1. The position of the Attorney General in the *Hunt* case was very important. Once the Attorney General ceased to have an interest, he could no longer be a party. Joinder is not the end of the story. The applicants had no real choice but to consent to the joinder of the second respondent in April 2019, as the second respondent wanted to run a case on having an interest. Now the second respondent wanted to have its cake and eat it, by being a party but not having to prove its case.

2. If there is a test to be applied, then it should be "directly affected". But it begs the question, what is "directly affected"? It must refer to the second respondent's rights. But the second respondent has to establish them.

3. The second respondent is not directly affected. There is no analogy with *Re Hans Place Ltd*.

4. The second respondent needs to show that it has title to the properties.

5. If the second respondent were to say that it was no longer asserting an interest in the assets, the applicants would apply to strike out the second respondent as a party. So, as they have not said that, so the applicants have not applied to strike them out.

19. In my judgment, the starting point to resolving the question of the standing of the second respondent to oppose the applicants' claim to revesting under section 283A is that this issue is a *bankruptcy* issue arising between the trustee in bankruptcy and the bankrupts. It does not affect or alter the rights in relation to the assets concerned as a matter of property law. The only question is who should have those rights, the trustee or the bankrupts: see *Cambridge Gas Transportation Corporation v Creditors of Navigator Holdings plc* [2007] 1 AC 508, PC, [14], per Lord Hoffmann, giving the advice of the Board. The second respondent is not a creditor in the bankruptcies. So it has to have some special reason to be involved in what is otherwise a pure bankruptcy issue. In *Re Bradford Navigation Company* (1870) LR 5 Ch App 600, cited by the applicants, a canal company presented a petition for its own winding-up. A winding-up order was made at first instance. Another canal company, whose canal communicated indirectly with it, and which claimed a statutory right to use the petitioning company's canal, but was not a creditor of that company, sought to be heard on appeal from that order.

20. James LJ said (at 603):

> "It appears to me that it would be extending litigation beyond all possible limits if every person who may have a right with respect to property which belongs to a company could come here and say that the winding-up will interfere with his rights…
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> In the meantime, the winding-up order, according to my view of the law, does not in the slightest degree derogate from any right whatever which a third person, a stranger, has in respect of the property; therefore, the winding-up order is not an order which affects the Appellant, and I am bound to refuse the Petition of Appeal on this ground."

It was clear that the winding-up order made in that case did not abolish, reduce or otherwise affect the statutory rights of passage claimed by the appellant. Hence James LJ referred to the order made as one which did not affect the appellant. So it is important to look at the particular relief claimed by applicants in insolvency proceedings such as the Bankruptcy Application, to see whether rights (or claimed rights) of third parties are derogated from or otherwise affected.

21. It is (I think) common ground between the parties that, at least so far as *applicants* are concerned, a test of "legitimate interest" is laid down by the authorities. The parties disagree however about the position for *respondents*. The applicants say that a similar test applies to respondents. The second respondent denies this.

22. In my judgment, there is a profound difference between the position of applicants and respondents, which explains why the cases refer to applicants rather than to respondents. Applicants choose to bring applications, and they choose who to sue. Respondents usually do not. Generally speaking, applicants sue respondents whom they wish to be bound by the decision to be made by the court. Such respondents are chosen by the applicants themselves, and there is no need to apply any other test, such as "legitimate interest" to such respondents to justify their standing to oppose the relief sought against them. Where the applicants have not chosen to sue particular persons, but those persons seek to be joined as respondents, then the test for joinder is not "legitimate interest", but rather that stated in CPR rule 19.2(2), which applies to insolvency proceedings by virtue of rule 12.1 of the Insolvency (England and Wales) Rules 2016. In essence, rule 19.2 gives the court power to join third parties whom it is desirable to add in order to resolve all the matters in dispute. Of course, it could be said that this is just a litigation-centric way of conveying a similar idea to "legitimate interest".

23. Sometimes the reason for joining a third party is simply so that that third party is bound by the decision made by the court in the dispute between the applicant and the existing respondent. In such a case the third party will have little or nothing to do other than to take part in the existing issue. Sometimes however it is because a further issue has been raised by the third party. In such a case the point of joining the third party is to resolve that further issue. In such a case the issue must be pleaded out and tried. The question therefore arises in this case, what was the issue that was to be resolved by joining the second respondent to the Bankruptcy Application in April 2019? The issues already arising in those proceedings fell largely into two parts. First there were issues about the first respondent's conduct, claimed to amount to

misfeasance, and consequential claims to reverse the transactions he had entered into. Second, there was the question of revesting of the assets in the applicants under section 283A. They are quite distinct.

24. The first part was later struck out by me for lack of standing. The second part consisted of issues between the applicants and the first respondent, *inside* the bankruptcy. The second respondent was interested (at least in a general, non-technical sense) in this because it claimed as *successor in title* to the first respondent. If that created *another* issue to be resolved, that is, the validity and effectiveness of the transactions between the first and second respondents, then that issue would have to be pleaded out and tried so that it could be resolved as rule 19.2 requires. If on the other hand joinder of the second respondent to the Bankruptcy Application did not involve a new issue between the applicants and the second respondent, and was only for the purpose of binding the second respondent to the decision on the revesting issue, then the only issue to be resolved would be that section 283A issue. It may be that Mr John Jarvis QC thought that the answer was the former rather than the latter (although it is fair to say that this was before the strike out application was made). I also thought (but later) that it was the former, and that is one reason why I said what I said in paragraphs 37 and 38 of my judgment of 23 March 2020. The applicants take the same view. But the second respondent submits that the answer is the latter, not the former.

25. It cites *Hunt v Conwy County Borough Council* [2015] EWHC 3072 (Ch). In this case, Mr Hunt was the owner of the fee simple estate in a pier at Conwy. The pier apparently contained a unit of living accommodation. In 2008 he was adjudicated bankrupt on the petition of the local authority as a result of failing to comply with a statutory demand to pay rates and council tax. The pier vested in the trustee in bankruptcy. It appears to have been accepted that the living accommodation on the pier was a 'dwelling house' within section 283A of the 1986 Act which was the sole or principal residence of Mr Hunt at the date of his bankruptcy. In 2011, before the three-year period from the date of bankruptcy had expired, the trustee applied for an order for possession of the pier, so that section 283A of the 1986 Act did not apply. The trustee thereafter purported to disclaim the fee simple estate under section 315 of the Insolvency Act 1986.

26. Later in that year Mr Hunt made an application against the Attorney General under section 320 of the 1986 Act for a vesting order in relation to the pier, on the basis that the disclaimer by the trustee had been effective, but that at the time of presentation of the petition he had been in occupation of the 'dwelling-house' on the pier. In March 2012, the Crown Estate Commissioners, exercising statutory powers, on the basis that the disclaimer had caused an escheat of the fee simple estate to the Crown, created a new fee simple estate in the pier in favour of the Welsh Government, which then transferred it to the local authority, Conwy CBC. That transfer was subject to all third party interests, including the right of any person to obtain a vesting order in respect of the pier. In August 2012 Mr Hunt's application for a vesting order under section 320 was dismissed by the County Court. In January 2013 the trustee was released under section 299 of the 1986 Act. In April 2013 an appeal by Mr Hunt against the dismissal of the application for a vesting order under section 320 was allowed, and the matter remitted to the County Court for reconsideration.

27. Before the second hearing could take place in the County Court, Mr Hunt issued a fresh application seeking a declaration that the disclaimer had been invalid, to which the only respondent was the former trustee in bankruptcy. The argument for invalidity was based on an alleged failure to comply with the rules regarding service of the notice of disclaimer. This further application came before the County Court in January 2014, when it was dismissed, the former trustee in bankruptcy not appearing or being represented. The judge held that the disclaimer was effective. Mr Hunt sought permission to appeal, which was refused on the papers by Peter Smith J, but then granted by him after being renewed at an oral hearing. In January 2015 the local authority applied to be joined as respondent, and Peter Smith J joined it pursuant to CPR rule 19.2(2). He also ordered that the matters remitted to the County Court after the first appeal should be transferred to the High Court so that those matters and the current appeal could be heard together. In October 2015 Mr Hunt issued a further application seeking (amongst other things) an order that the local authority be removed as a respondent to the appeal. The various matters came on for hearing before Morgan J later in October 2015.

28. The judge dealt first with the most recent application, to remove the local authority as a respondent to the appeal. He said:

> "37. Mr Hunt's submissions on this application fail for multiple reasons. First, his analysis of the position as to title is wrong. Mr Hunt was correctly registered as proprietor of the pier following his purchase of it. When he became the subject of a bankruptcy order and a trustee was appointed, the freehold title to the pier vested in the trustee under section 306 of the 1986 Act and Mr Hunt ceased to be the owner of the pier. There was an effective disposition, by operation of law, in favour of the trustee even though the trustee did not apply to be registered as the proprietor: see the Land Registration Act 2002, section 27(5)(a). […] If I hold that the freehold in the pier, registered under WA727155, was effectively disclaimed by the trustee, then that title came to an end and the Land Registry will close the registered title. As explained earlier, the Crown has created a new freehold title which was transferred to Conwy. I understand that Conwy has applied to be registered in relation to that new freehold title but the Land Registry has not yet completed that registration in view of an objection from Mr Hunt. Accordingly, the question as to the ownership of the pier will be answered by the determination of the various disputes between Mr Hunt and Conwy. The answer all depends on the outcome of this litigation. […]
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> 38. Conwy is the obvious respondent both to Mr Hunt's appeal and to his application for a vesting order. It was correctly joined as a respondent to the appeal under CPR r. 19.2(2). There was no appeal against the order joining Conwy. Indeed, there were no possible grounds for such an appeal. Further, there has not been a change of circumstances which would arguably allow me to vary or revoke, pursuant to CPR r. 3.1(7), the order for joinder made on 20 January 2015. Mr Hunt's application of 9 October 2015 is hopeless, totally without merit and will be dismissed. I add that Mr Hunt has raised a similar point on previous occasions and his point has previously been rejected. His attempt to raise it again was an abuse of process.
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> 39. Apart from all of the above, Mr Hunt's attempt to remove Conwy as a respondent to the appeal would be pointless. The result would be that Conwy

would not be bound by the result of the appeal as it would not have been a party to the appeal."

29. The judge then went on to consider the appeal against the County Court dismissal of Mr Hunt's application of December 2013 (arguing that the disclaimer was invalid). The judge considered the various points raised on the appeal, and dismissed it, largely on procedural grounds and on the basis of an abuse of process in seeking to raise factual matters which had not been investigated at the original trial. It is to be noted that this was a case where the applicant for a vesting order (Mr Hunt) indeed challenged the local authority's title, and argued that the local authority had no business being involved in the case. Yet the judge, far from requiring the local authority to prove its title, summarily dismissed the application to remove it. As he said, the local authority was the obvious respondent.

30. In the light of the second respondent's fuller arguments at the hearing I am persuaded that my earlier view (formed without the benefit of, *inter alia*, *Hunt v Conwy CBC*) was wrong, and that the purpose of joining the second respondent was not to raise a new issue which had to be pleaded and tried out, but instead so that the second respondent should be bound by the decision in the claim between the applicants and the first respondent. The issue between the applicants and the first respondent was as to where the rights to the cottage and the strip lay *as between them*. If it were then to be decided that those rights lay with the first respondent as trustee in bankruptcy (*ie* if the claim under section 283A failed) then, so long as there was no prospect of all the creditors being paid and a surplus being realised, the applicants would have no further interest in where the title went after that. On the other hand, the creditors would or might be interested, because, if the first respondent dealt with the property so as not to realise as much as could reasonably be done, then they would lose money. But it would make no difference to the applicants.

31. Whether the second respondent has a good claim to any rights in the cottage and the strip that the first respondent might have is a matter between the first and second respondents (and possibly the bankruptcy creditors), but it does not concern the applicants. Their concern is with the claim to revesting under section 283A. On the other hand, the second respondent *is* directly affected by the litigation between the applicants and the first respondent, because the second respondent claims under the first respondent. If the first respondent has no rights (because they have been allocated to the applicants by operation of bankruptcy rules) then the second respondent obviously gets nothing. It is in this respect exactly like the *Hunt* case, where the local authority claimed (indirectly) under the trustee in bankruptcy who had disclaimed the fee simple estate, so that it escheated to the Crown. As I have said, Morgan J said, in circumstances where the trustee in bankruptcy had been released and had no further interest in dealing with the claim, that the local authority was the obvious respondent.

32. In my judgment, that is sufficient to resolve this application. The second respondent was joined because it would be directly affected by the result of the litigation between the applicants and the first respondent, and it is necessary or at least desirable that the second respondent be joined in order that it is bound by the result, thus avoiding a multiplicity of litigation. In my judgment the second respondent is not obliged to go on and prove the validity of transactions between the first respondent and itself. That is not an issue in the section 283A claim. It *was* an issue in other parts of the Bankruptcy Application put forward by the applicants, but they were struck out for

lack of standing. It *would* be an issue between the first and second respondents, if the first respondent chose to make it so, or perhaps between the bankruptcy creditors and the respondents, but they have not chosen so to argue.

33. In addition to all this, the second respondent also submits that it would be an abuse of process to permit the applicants to raise exactly the same factual allegations as were relevant to their claim of misfeasance against the first respondent, which has been struck out for lack of standing, as a challenge to the standing of the second respondent to the claim by the applicants to the revesting of assets under section 283A.

34. During the hearing I had some doubts as to whether these were not two different things. But on reflection after the hearing I can see that they are in fact the same in substance. If, because the applicants have no economic interest in making the allegations of misfeasance, they have no standing to do so, they should not be allowed to impugn the title of the second respondent by repeating those allegations of misfeasance. The second respondent claims to have a *prima facie* title, because it has a conditional contract with the first respondent in relation to the cottage and it has been registered as proprietor in the land register of the ransom strip. The applicants' attack on this title consists entirely of allegations which formed part of the complaint of misfeasance against the first respondent, which I decided they had no standing to make.

35. In the circumstances, whatever the position might have been if the claim of misfeasance had not been struck out, I hold that it is not permissible at the trial for the applicants to challenge the title of the second respondent by reference to any of the allegations of misfeasance made against the first respondent or indeed the liquidators of the partnership. This means that in substance the application succeeds.

36. I therefore need to consider whether it is appropriate to grant a declaration in the terms sought, or indeed at all. In *Messier-Dowty Ltd v Sabena SA (No 2)* [2001] 1 WLR 2040, CA, Lord Woolf MR (with whom Hale LJ and Lord Mustill agreed) said:

> "41. … The approach is pragmatic. It is not a matter of jurisdiction. It is a matter of discretion. The deployment of negative declarations should be scrutinised and their use rejected where it would serve no useful purpose. However where a negative declaration would help to ensure that the aims of justice are achieved the courts should not be reluctant to grant such declarations. They can and do assist in achieving justice. For example where a patient is not in a position to consent to medical treatment declarations have an important role to play."

37. In the present case I do not think that a declaration is necessary, because the purposes for which it is sought relate to a hearing before the court beginning shortly. It is not needed, for instance, in order to persuade a third party to behave in a particular way, as in the example given by Lord Woolf above. The court will obviously take notice of what it has previously held on this application. As foreshadowed at the hearing on Friday, I look forward to hearing further from counsel as to the way forward by 4 pm on Monday.