Neutral Citation Number: [2020] EWHC 1737 (Ch)

CR-2019-006422

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
IN THE MATTERS OF ROCHAY PRODUCTIONS LIMITED (IN LIQUIDATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 07/07/2020

Before :

ICC JUDGE BARBER

- -

Between :

OPUS ART LIMITED

Applicant

- and –

(1) MR NEDIM AIYLAN
(as Liquidator of ROCHAY PRODUCTIONS LIMITED)
(2) MEDINA WILLIAMSON
(3) ROCHAY ELITE LIMITED

Respondents

- -

Christopher Lloyd (instructed by Howard Kennedy LLP) for the **Applicant**
Jonathan Coad (of Coad Law LLP) **fo**r the **Second and Third Respondents**
The **First Respondent** appeared in person for part of the hearing
Hearing date: 7 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.

.....

ICC Judge Barber

1. This is an application brought by Opus Art Limited under r.15.35 of the Insolvency Rules 2016 (IR 2016) to challenge the admission of the Third Respondent's proof of debt for voting purposes at a meeting of creditors of Rochay Productions Limited ('Rochay Productions') held on 4 September 2019. The application is now unopposed and the only issue between the parties is who should pay the Applicant's costs of the application. The Applicant contends that the Second Respondent, Ms Medina Williamson (as chair of the meeting) and/or the Third Respondent should be ordered to pay the Applicant's costs. The costs application is opposed.

Costs: Applicable Law

2. In ordinary proceedings, the general rule is that the unsuccessful party should pay the successful party's costs, although the court may make a different order: CPR 44.2, r.12.41(3) IR 2016.

3. In the context of appeals against the admission or rejection of a proof, however, the ordinary rule under CPR 44.2 is tempered to an extent. The person who made the decision on the proof giving rise to the appeal is afforded a degree of protection. Rule 15.35(6) IR 2016 provides that 'the person who made the decision is not personally liable for costs incurred by any person in relation to an appeal under this rule unless the court makes an order to that effect'.

4. There is a similarly worded rule in respect of the liability of office holders for the costs of appeals from their decisions to admit/reject proofs for dividend purposes: r.14.9(2) IR 2016. In that context, case law has established that an order for costs against an office holder should only be made in special circumstances, such as where the office holder's decision was self-interested, irrational or unreasonable; or there is otherwise good reason to do so: see Nimat Halal Food v Patel [2020] EWHC 734 (Ch) at [13]-[14], [45]; Fielding v Hunt [2017] EWHC 406 (Ch) at [11]-[19].

5. In my judgment the approach adopted in relation to the liability of office holders for the costs of appeals from their decisions to admit or reject proofs for dividend purposes is equally applicable to cases falling within r.15.35 where the chair or convenor of the meeting is not an office holder. An order for costs against the chair or convenor should only be made in special circumstances, where the decision to admit or reject a proof was self-interested, irrational or unreasonable, or where there is otherwise good reason to do so.

6. With these principles in mind, I turn to consider the present application.

Background

7. Rochay Productions was incorporated in 2011. Until 29 July 2019, its sole director was a Mr Nicholas Baker. The Second Respondent became sole director of the company on 30 July 2019, the day after Mr Baker resigned.

8. The Third Respondent is the sole shareholder of Rochay Productions.

9. From 2012 to 2019, the directors of the Third Respondent were Mr Kevin Rochay and Mr Baker. Mr Baker resigned on 18 April 2019.

10. The sole shareholder of the Third Respondent is Rochay Group Limited ('Rochay Group'). The sole shareholder and director of Rochay Group is Mr Kevin Rochay.

11. The Rochay website describes Rochay Productions as a company 'specialising in the design and creation of unique brand-enforcement mechanism and produces the most luxurious tactile publications, celubrious [sic] events, shows, film productions and apps in the world today'. Mr Kevin Rochay is described as an 'adviser to leaders around the world'. The Rochay companies are described as running an exclusive club called 'Rochay Elite'; the website boasting that 'our membership base consists of 85% of the UK Rich List, 52% of the Global Rich List and C-level executives of the FTSE 100/250 and Fortune 500.' Membership of the club referred to as Rochay Elite is said to cost £50,000 per year.

12. The accounts of Rochay Productions, the Third Respondent and Rochay Group, however, paint a rather different picture. From 2011 to 2017, Rochay Productions filed dormant accounts at Companies House. A company is only permitted to file dormant accounts if it has 'no significant accounting transactions' in the relevant period: s.1169 Companies Act 2006 ('CA 2006'). Rochay Productions filed 'micro entity' accounts for the year ending 31 October 2017. The Third Respondent and Rochay Group have only ever filed dormant accounts at Companies House.

The Opus Art Proceedings

13. During the course of 2016, the Applicant entered into a series of contracts with Rochay Productions. The Applicant agreed to sponsor events which Rochay Productions said it would be organising during 2016/17. The Applicant paid approximately £130,000 to Rochay Productions to sponsor these events. The events did not take place, however, and the money was not returned.

14. On 21 December 2017, the Applicant issued proceedings against Rochay Productions and Mr Baker claiming damages for breach of contract and fraudulent misrepresentation. The trial of the claim took place on 24-27 June 2019 and judgment was given on 15 July 2019. HHJ Backhouse found Rochay Productions and Mr Baker liable in deceit for a series of fraudulent misrepresentations made to the Applicant. She ordered Rochay Productions to pay damages and costs of £247,547.48 (of which sum Mr Baker was jointly liable for all except £31,036). In her judgment, HHJ Backhouse was highly critical of Rochay Productions and Mr Baker.

15. The judgment debt was due to be paid on 29 July 2019. That day, Mr Baker resigned as a director of Rochay Productions. He filed for bankruptcy the following day. On 30 July 2019, the Second Respondent was appointed as sole director of Rochay Productions by the Third Respondent.

Voluntary Liquidation

16. On 15 August 2019, Rochay Productions gave notice to the Applicant that its director had resolved to place the company into creditors' voluntary liquidation and proposed the First Respondent for appointment as liquidator. Enclosed with the notice was a

statement of affairs signed by the Second Respondent, who at that stage had been a director of Rochay Productions for just over two weeks. The statement of affairs stated that Rochay Productions had no assets but had unsecured creditors including:

(1) £39,362.10: described as 'trade and expense creditors' (predominantly the company's former solicitors, Healy's LLP);

(2) £247,047.48: described as 'other creditor' (the Applicant's judgment debt); and

(3) £477,843.55: described as 'parent company loan account'.

17. On 20 August 2019, the Applicant lodged its proof of debt (in the sum of £248,547.48) and Notice of Objection to Deemed Consent, in accordance with rule 6.14(4) IR 2016.

18. On or about 28 August 2019, the Third Respondent lodged a proof of debt signed by Kevin Rochay, stating that Rochay Productions was indebted to the Third Respondent for 'funds advanced' in the sum of £477,843.55.

The Creditors' Meeting on 4 September 2019

19. A physical meeting of creditors was convened on 4 September 2019. The Second Respondent was the convenor/chair of the meeting for the purposes of IR 2016.

20. Prior to the meeting, Howard Kennedy, the Applicant's solicitors, wrote to the First Respondent's firm, Abbott Fielding, querying the proof of debt submitted by the Third Respondent. By email dated 2 September 2019, the First Respondent replied stating as follows:

> 'I enclose for your attention a copy of the Proof of Debt submitted by Rochay Elite Limited. In anticipation of this exact question, I also requested copies of the bank statements and I have satisfied myself that the amounts claimed have been deposited within the bank account.
>
> I note that you will be objecting to the admission of Rochay Elite Limited's alleged debt, and I would comment as follows:
>
> Firstly, it is not my duty to adjudicate on this but rather the duty of the Chairman of the Meeting, although we will be advising him.
>
> Secondly, I would be grateful if you could please advise on what grounds you are disputing the claim. As have stated, I have been supplied with bank statements (which will be available at the meeting) which show the amounts deposited and there is no evidence that these have been repaid. Therefore the amount claimed does appear to be technically valid.
>
> In addition I have discussed the matter with my Solicitors. The advice given to me was that I should enquire as to the grounds

> on which you are objecting to this as it does appear that this is a valid claim, unless you are aware of any information which is not in my possession.'

21. At the meeting on 4 September 2019:

(1) The Applicant proposed that Andrew Cordon and James Everist of Corporate Financial Solutions be appointed as liquidators. As an alternative, Mr Everist proposed a joint appointment of the First Respondent and himself. The Third Respondent objected to the appointment of Messrs Cordon and Everist and supported the appointment of the First Respondent.

(2) The Applicant objected to the admission of the Third Respondent's proof of debt. The Second Respondent admitted the proof in full for voting purposes in accordance with r. 15.33 IR 2016. As a result, the Third Respondent was the majority creditor at the meeting.

(3) By a majority, the creditors resolved that the First Respondent be appointed as liquidator of Rochay Productions.

The Appeal against Proof

22. On 25 September 2019, the Applicant issued its application pursuant to r.15.35 IR 2016 challenging the Second Respondent's decision to admit the Third Respondent's debt and arranged service of the same, together with the supporting statement of Mr James Everist dated 25 September 2019, upon each of the three Respondents. Mr Everist's statement included, among other things, an analysis of the bank statements originally relied upon to support the Third Respondent's proof. The analysis suggested that, on the bank statements alone, the Third Respondent was a debtor rather than a creditor of Rochay Productions.

23. By letter dated 3 October 2019, the First Respondent acknowledged receipt of the application and confirmed that as liquidator, he maintained a position of neutrality on the same. He went on to confirm that since the creditors' meeting of 4 September 2019, he had undertaken a 'preliminary bank analysis'. He continued:

> 'whilst it shows investment from the creditors in excess of £500,000, there also appears to be payments going the other way which suggests your client's claim might be the largest creditor. However, you will appreciate that in the shortness of time, and without being in funds to instruct lawyers to advise me, I am unable to form a definitive view on the directors claims.
>
> I have discussed the matter with the former Director [Mr Baker], who advised me that the figures do not reflect management charges due from Rochay Production to [the Third Respondent], nor do they reflect the interest due to the three investors which would bring the total claim due to these parties to in excess of £400,000.

> I can confirm that I have had sight of both the loan agreements and the management charges, which support this assumption, but, as previously stated, I will maintain a position of neutrality.
>
> Finally, I note your comments that you will not be seeking a Costs Order against me as Liquidator.'

24. In early October 2019, Mr Baker provided the First Respondent with documents relating to the Third Respondent's proof, including loan documents ('the Loan Agreements'). Copies of the Loan Agreements were provided by the First Respondent to the Applicant's solicitors on 18 October 2019.

25. The Second Respondent was not represented in the proceedings and played no active part in the same until April 2020, very shortly prior to the hearing before me, when she instructed solicitors to oppose any costs order being made against her.

26. The Third Respondent was warned by letter of 8 October 2019 that the Applicant would seek costs against it if it opposed the application, but nonetheless instructed Mr Coad (then of Keystone Law, latterly of Coad Law) actively to oppose the same until very shortly before the date fixed for the final determination of the application.

27. By letter dated 18 November 2019, Mr Coad wrote to Howard Kennedy, the Applicant's solicitors, stating that the application was 'misconceived' and that the Third Respondent would be seeking its costs against the Applicant. The letter continued:

> 'We refer to the three loan agreements which were sent to you by the Liquidator. These contracts are the basis in addition to the relevant bank statements which you also have in your possession from the Liquidator, who has (we understand) confirmed that the relevant transfers did take place into Rochay Productions, and that according to all the available evidence our client is the largest creditor of Rochay Productions…. Accordingly, according to all the relevant documentation the Application is bound to fail, and should therefore be abandoned.'

28. The letter of 18 November 2019 further indicated that the Third Respondent would apply for security for costs.

29. On 20 November 2019, directions were given (inter alia) for any evidence in response to the application to be filed and served by 4 December 2019, with evidence in reply by 18 December 2019. The application was listed for final hearing on the first available date after 3 February 2020 with a time estimate of one day. Directions for cross examination were given on the usual terms.

30. No evidence was served by the Third Respondent by 4 December 2019 or at all. By email dated 13 December 2019, Howard Kennedy wrote to Mr Coad asking whether the Third Respondent still intended to file evidence in response. Having received no response, on 17 December 2019 Howard Kennedy emailed Mr Coad again, stating

that the Applicant intended to apply back to court to bring the hearing forward with a shorter time estimate. This prompted an email from Mr Coad of the same date, in which he stated (inter alia):

> '… the position is straightforward:
>
> i. There is a contract by which Rochay Elite leant [sic] to Rochay Productions a sum in excess of £400,000 ('the Loan Contract').
>
> ii The liquidator has the original of the Loan Contract.
>
> iii There is no evidence to question the authenticity of the Loan Contract.
>
> iv The liquidator has obtained the bank records which prove that the payments were made from Rochay Elite to Rochay Productions in accordance with the Loan Contract.
>
> … It follows then that your client's application is entirely misconceived based on the unequivocal evidence of the contemporaneous documentation'

31. On 18 February 2020, following steps undertaken to collect in Rochay Productions' books and records and to analyse available evidence in support of the Third Respondent's proof, the First Respondent wrote to Howard Kennedy confirming that it was his intention to 'reject' the 'elite claim'. By letter dated 21 February 2020, the First Respondent wrote to the Third Respondent 'rejecting' its proof in full. It is not entirely clear on what basis the First Respondent thought himself to be ruling on the proof at that stage, given that no fresh decision procedure was underway and no dividends were under consideration. The overall effect of the 'rejection', however, was to formalise the First Respondent's position on the proof and to inform the Third Respondent of the same.

32. By email dated 8 April 2020 Mr Coad (by then of CoadLaw, having left Keystone Law) confirmed that he remained instructed by the Third Respondent.

33. By further email dated 22 April 2020, Mr Coad wrote to Howard Kennedy enclosing Notice of Change, and stating that he was now instructed by the Second Respondent as well as the Third Respondent. The email went on to confirm that the Second and Third Respondents conceded the substantive relief sought by the application but opposed costs.

34. By letter of 24 April 2020 sent by email to Mr Coad, Howard Kennedy wrote confirming its intent to seek costs against both the Second and Third Respondents in the absence of agreement on costs. The letter concluded by warning that the Applicant would shortly be starting preparations for the hearing fixed for 7 May 2020 and invited the Second and Third Respondents' agreement to an enclosed consent order by 27 April 2020.

35. No agreement on costs was reached by 27 April 2020. Instead, Mr Coad filed and served a witness statement on that issue.

The Third Respondent's proof

36. Before turning to the issue of costs I should address briefly the conclusions which I have reached on the substantive application. Whilst the substantive relief sought is no longer opposed, the decision whether to allow an appeal against a decision on a proof is ultimately a matter for the court on the evidence then before it.

37. On the evidence before me, I have no hesitation in allowing the appeal against proof.

38. The proof stated that a debt of £477,843 was owed by Rochay Productions to the Third Respondent for 'funds advanced' and that the debt was supported by bank statements.

39. On the evidence before me however, the proof was indefensible.

40. The bank statements initially relied upon to 'support' the proof do no such thing. As confirmed by Mr Everist in his first witness statement, which in this regard I accept:

(1) The bank statements show payments of £262k from the Third Respondent to Rochay Productions and payments of £292k from Rochay Productions to the Third Respondent. On the bank statements, therefore, the Third Respondent is a debtor of Rochay Productions and not a creditor.

(2) A total of £252k said to be due from Rochay Productions to the Third Respondent in fact originated from third parties (including the Second Respondent) who have not separately proved in the insolvency proceedings. Whilst Mr Rochay informed the First Respondent that the funds received by Rochay Productions from Ellora Harper, Proprietary Publishing Limited, the Second Respondent and Mrs Edwards Brown represented sums due to the Third Respondent, no evidence was produced to support that assertion.

41. The purported Loan Agreements relied upon by the Third Respondent (but not mentioned in the proof) do not support a claim for £477k either. In particular:

(1) The purported Loan Agreement between Rochay Productions and the Third Respondent is dated 17 February 2014 and made between 'Rochay Productions Limited' and 'Rochay Elite Limited'. Rochay Productions Limited was called 'Rochay Publishing Limited' until it changed its name on 12 August 2015. On the evidence overall, it is in my judgment legitimate to conclude that the document has been backdated.

(2) The remaining purported Loan Agreements do not support the Third Respondent's claim to be a creditor of Rochay Productions. On the contrary, these agreements (if taken at face value) suggest that the Second Respondent, Ms Edwards Brown and others were creditors of Rochay Productions, rather than the Third Respondent.

42. The Third Respondent has only ever filed dormant accounts at Companies House. An intercompany loan of £477,000 is inconsistent with those filings. Rochay Productions

filed dormant accounts to 2016 and micro entity accounts for 2017. Again, such a large loan is inconsistent with those filings.

43. The Third Respondent was given ample opportunity to file evidence to substantiate its proof in this application but elected not to do so.

44. Overall, on the evidence as a whole, I am satisfied that the debt claimed by the Third Respondent's proof cannot be substantiated and that the appeal against proof must be allowed. The decision of the Second Respondent at the creditors' meeting of 4 September 2019 to admit the proof shall be set aside and the proof struck out. The First Respondent shall be directed to convene a new meeting of creditors for the purpose of allowing a fresh vote on who should be liquidator of Rochay Productions.

45. I turn, then, to the issue of costs.

The Third Respondent

46. On behalf of the Third Respondent, Mr Coad submitted that no costs order should be made against the Third Respondent because no such order was sought in the application notice. I reject this submission. Costs are at the discretion of the court, irrespective of whether they are expressly sought as a head of relief. The Third Respondent was warned in October 2019 that costs would be sought against it in the event that it actively contested the proceedings. Notwithstanding this warning it was not until 22 April 2020, very shortly before the final hearing, that the Third Respondent withdrew its opposition to the substantive relief sought by the application.

47. Mr Coad further argued that no costs should be awarded as the Applicant had failed to comply with 'pre-action protocols' by sending a letter before application. This argument was misconceived. Given the tight time limit of 21 days for issuing an appeal against proof, the usual CPR protocols do not apply. That aside, the Third Respondent was given a very early opportunity (by letter of 8 October 2019, shortly after issue of the application) to concede the substantive relief sought and instead instructed solicitors actively to oppose it. There was nothing before me to suggest that a 'pre-application' letter would have made any difference, in context.

48. Mr Coad also offered a variety of excuses for the Third Respondent's late change of position. He maintained that the Third Respondent had concluded that there was no point in defending the proof as (1) Rochay Productions was insolvent so there would be no prospect of recovery on the proof anyway and (2) it did not consider that the Applicant could meet any costs order made in the Third Respondent's favour in the event that the application was dismissed. No persuasive evidence was adduced in support of either of these purported explanations and I have no hesitation in rejecting the same. Explanation (1) begs the question why the proof was lodged at all; I was taken to no evidence to suggest that at the time of lodging the same the Third Respondent understood Rochay Productions' financial position to be any different to that which it occupied on 22 April 2020. Explanation (2) begs the question why the Third Respondent refused the Applicant's early invitation, by letter of 8 October 2019, to concede the relief sought.

49. Mr Coad also maintained that the Third Respondent had decided to concede the application because it did not have access to the 'relevant documents' required to

substantiate its debt. I reject that explanation. The Third Respondent plainly had access to copies of the bank statements with which it originally sought to support its proof and it had access to the purported Loan Agreements later relied upon, which by letters sent in November and December 2019 Mr Coad had claimed made the position 'straightforward' and the Applicant's application 'misconceived'. It also had ready access to its own books and records, which would evidence the debt if it existed.

50. In my judgment the real reason why the Third Respondent has abandoned defence of its proof is that the proof is indefensible.

51. On the evidence before me I am satisfied that the Third Respondent should be ordered to pay the costs of this application. I am further satisfied that the Third Respondent's conduct takes this case outside of the norm and that costs should be awarded on the indemnity basis.

52. The Third Respondent submitted a proof of debt which was unsupported by contemporary documents. Those documents which it did produce appear either to be backdated or to undermine the sum claimed.

53. In the absence of evidence which should be readily available to the Third Respondent to substantiate its proof and in the absence of any plausible explanation for its late withdrawal of opposition to the application, I consider it legitimate to conclude that the proof was knowingly submitted on a false basis. Having submitted a false proof which it had no means of substantiating, the Third Respondent then caused further delay and expense by instructing solicitors actively to oppose this application. Notwithstanding clear warnings that the Applicant would seek costs against it, the Third Respondent continued to contest the application until the eleventh hour. Taking all of these factors together, I am satisfied that the appropriate order in this case is that the Third Respondent do pay the Applicant's costs of and occasioned by this application on the indemnity basis.

The Second Respondent

54. The application for costs against the Second Respondent, however, shall stand dismissed.

55. The Second Respondent's position, as chair of the meeting of 4 September 2019, is entirely different to that of the Third Respondent. Her role at the meeting is framed by rule 15.33 IR 2016. This provides:

(1) that the chair 'must ascertain entitlement to vote and admit or reject claims accordingly';

(2) that the chair may admit or reject a claim in whole or in part; and

(3) that if the chair is 'in any doubt whether a claim should be admitted or rejected', the chair 'must mark it as objected to but allow votes to be cast in respect of it.'

56. Deciding on a proof for voting purposes is essentially a summary process, with any doubt being decided in favour of allowing the vote to be cast. In relation to an earlier version of the rule, Harman J in Re a Debtor (No 222 of 1990) Ex p Bank of Ireland

[1992] BCLC 137 described the test to be applied as follows: 'the scheme is quite clear… the chairman must look at the claim; if it is plain and obvious that it is good he admits it, if it is plain or obvious that it is bad he rejects it, if there is a question, a doubt, he shall admit it but mark it as objected.'

57. In the present case Mr Lloyd submitted on behalf of the Applicant;

(1) that the Second Respondent ought to have known that the Third Respondent's proof of debt was false;

(2) that the Second Respondent had a strong personal connection to Mr Rochay; and

(3) that the Second Respondent was not acting in good faith in admitting the Third Respondent's proof of debt.

58. With regard to (1), Mr Lloyd argued that having been appointed a director of Rochay Productions on 30 July 2019, a month or so before the meeting, the Second Respondent had a duty to familiarise herself with the affairs of the company. He argued that she should have:

(a) examined Rochay Productions' statutory accounts, which showed that it had only ever filed dormant/micro entity accounts at Companies House;

(b) familiarised herself with the findings of HHJ Backhouse, in particular in relation to the non-existent nature of Rochay Productions' business and the fraud perpetrated by Rochay Productions and Mr Baker on the Applicant; and

(c) examined Rochay Productions' bank statements to ascertain whether, as the Third Respondent claimed, it was a creditor of Rochay Productions in the sum of £477,000 odd.

59. With regard to (2), Mr Lloyd argued that in light of her connection to the Third Respondent and/or to Mr Rochay, the Second Respondent was not an objective arbiter in relation to the Third Respondent's proof of debt. In support of that contention, the following factors were relied upon:

(a) the Second Respondent had previously loaned the company £25,000 in January 2019. The Applicant maintained that given its timing, this loan was probably used to fund Rochay Productions and Mr Baker's defence of the Applicant's fraud claim;

(b) the Applicant alleged that the Second Respondent was present in court with Mr Baker and Rochay Productions' legal team for part of the trial before HHJ Backhouse (this was disputed);

(c) the timing of the Second Respondent's appointment as sole director of Rochay Productions was coordinated with the timing of Mr Baker's departure, from which it could be inferred that the Second Respondent acted 'in collusion' with Mr Baker;

(d) the statement of affairs signed by the Second Respondent in the lead-up to the creditors' meeting of 4 September 2019 described Rochay Productions' business as 'holding corporate events' and as being the publisher of a 'new luxury magazine',

which was inconsistent with dormant/micro-entity accounts and HHJ Backhouse's findings;

(e) the fact that the Second Respondent is currently represented in these proceedings by the same solicitor as the Third Respondent.

60. With regard to (3), in support of the Applicant's further contention that the Second Respondent was not acting in good faith in accepting the Third Respondent's proof of debt and that she was colluding with the Third Respondent to admit its proof in a sum which would prevent the Applicant from appointing its choice of liquidator, Mr Lloyd argued:

(a) that the Second Respondent was set on admitting the Third Respondent's proof of debt, irrespective of the matters set out herein which demonstrate that the proof was false. Had she examined the bank statements which purportedly supported the proof, he argued, it ought to have been clear that there was no net sum due to the Third Respondent.

(b) the Second Respondent appeared to have allowed her loan of £25,000 to Rochay Productions in January 2019 to be treated as part of the debt claimed to be owed by Rochay Productions to the Third Respondent; and

(c) the Second Respondent failed to deliver up books and records to the First Respondent after his appointment, including a purported 'Management Agreement' between the Third Respondent and Rochay Productions.

61. For all these reasons, the Applicant contended that there were 'good reasons' in this case to make a personal costs order against the Second Respondent. The Applicant maintained that she colluded in bad faith with the Third Respondent to ensure that a false proof of debt was admitted for voting purposes in order to prevent the Applicant, the true majority creditor, from appointing its choice of liquidator.

62. In my judgment, the Applicant has pitched its case too high against the Second Respondent.

63. With regard to (1), the Second Respondent was a newly appointed director of Rochay Productions. It is unrealistic to suggest that she should have read the judgment of HHJ Backhouse or conducted an in-depth arithmetical analysis of the bank statements supplied in support of the proof before deciding whether to allow votes to be cast in respect of it. It is also unrealistic to suggest that she should have concluded from the filing of micro-entity accounts that there was (or may be) nothing due to the Third Respondent. The accounts filed did not reflect the movements of money undoubtedly evidenced by the bank statements. It is clear from contemporaneous correspondence that the First Respondent, a licensed insolvency practitioner, was advising the Second Respondent and further that, in the run up to the meeting, the First Respondent himself had concluded that the Third Respondent's claim was valid. No criticism of the First Respondent has been raised in these proceedings. In my judgment, as a relatively new director of the company, it was reasonable for the Second Respondent to look to the First Respondent for assistance and advice when deciding whether to admit the proof to voting.

64. The process set out in rule 15.33 is a summary process; admit, reject, or, if in doubt, admit marked 'objected to'. Even if the Second Respondent had harboured some reservations about the Third Respondent's proof, therefore, unless she was certain that it was invalid, her obligation, as chair, was to admit it for voting purposes. Whether the proof was simply admitted, or admitted marked 'objected to', the costs consequences would be the same for the Applicant; it would have to lodge an appeal against proof.

65. The default position on the costs of an appeal against admission of a proof is clearly set out in rule 15.35(6): the person deciding whether to admit a proof for voting purposes is not personally liable for the costs of an appeal from that decision unless the court makes an order to that effect. This is a clear signal from the legislature that a personal costs order should not be made against persons in the position of the Second Respondent unless some good reason can be made out. In my judgment the court should be slow to set the bar as low as mere negligence, without more, for these purposes. It follows that, even if the Second Respondent did fail adequately to interrogate the proof before admitting it for voting purposes, that of itself, in my judgment, should not be treated as a 'special circumstance' or 'good reason' warranting the imposition of a personal costs order.

66. With regard to (2) and (3), on the written evidence before me and without the benefit of cross examination, the court should in my judgment be slow to conclude that the Second Respondent acted with bias, conscious impropriety or otherwise in bad faith when admitting the debt. Whilst there is circumstantial evidence suggesting a long-standing connection with the Third Respondent, I accept Mr Coad's submission that the court should require cogent evidence in support of any allegation of bias, collusion, conscious impropriety or bad faith. The evidence before me, which comes before me untested, does not clear that hurdle.

67. It is clear from contemporaneous correspondence that the First Respondent was assisting and advising the Second Respondent in relation to the process of deciding whether or not to admit proofs in the run-up to the meeting of creditors; it is also clear that, at that time, the First Respondent himself considered that the proof should be admitted on the evidence which he had reviewed. Whilst Mr Lloyd maintained that the First Respondent did not have the 'background knowledge' enjoyed by the Second Respondent, I was not taken to anything in the evidence from which knowledge that the proof was false could be imputed to the Second Respondent.

68. Moreover, the Second Respondent has at no stage contested the application. She was joined as a respondent by the Applicant and (save on the issue of costs) did no more than any chair or convener would usually do: abide the event. She has not taken any steps which have exacerbated costs. She may have come to the wrong decision on the Third Respondent's proof, but for reasons already explored, that of itself, in my judgment, is not sufficient to warrant ordering her personally to pay the costs of this application.

Conclusions

69. For the reasons given, I shall grant the substantive relief sought on this application and order that the Third Respondent pay the Applicant's costs of and occasioned by

this application on the indemnity basis. The application for costs against the Second Respondent shall stand dismissed.

ICC Judge Barber

30 June 2020