Neutral Citation Number: [2021] EWHC 2970 (Ch)

Case No: CR-2021-MAN-000037

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

In the Matter of Edengate Homes (Butley Hall) Limited in liquidation
And in the Matter of the Insolvency Act 1986

Date: 5 November 2021

Before :

His Honour Judge Halliwell sitting as a Judge of the High Court

- -

Between :

Adele Lock	**Applicant**
- and -	
(1) Paul Stanley (in his capacity as liquidator)	
(2) Edengate Homes (Butley Hall) Limited	**Respondents**

- -
- -

Mr Matthew Collings QC (instructed by **Simon Burn solicitors**) for the **Applicant**
Mr Joseph Curl QC (instructed by **Kidd Rapinet LLP**) for the **Respondents**

Hearing dates: 28th October, 5th November 2021

- -

APPROVED JUDGMENT

His Honour Judge Halliwell:

(1) Introduction

1. This application ("**the Application**") arises out of the insolvent liquidation of Edengate Homes (Butley Hall) ("**the Company**"). The liquidator, Mr Paul Stanley ('**Mr Stanley**"), has assigned causes of action originally vested in the Company itself and statutory claims to which he was entitled as office holder. The assignee is a specialist insolvency litigation financing company, Manolete Partners plc ("**Manolete**"). The main issues in the Application are as to the validity of the assignment ("**the Assignment**") and the standing of the creditor who seeks to challenge it.

2. The creditor is Mrs Adele Lock ("**Mrs Lock**"). Although she made the Application in her capacity as a creditor, she is also a member and director of the Company. More significantly, the causes of action and the statutory claims are against herself and members of her family.

3. The Assignment is embodied in a written agreement dated 26th September 2019 between the Company itself and Mr Stanley, as assignors, and Manolete, as assignee. It encompasses claims against six named parties and "any companies or individuals associated or connected with [them]". The six named parties include Mrs Lock herself, her husband Mr Matthew Lock ("**Mr Lock**") and her parents, Mr Alan and Mrs Susan Forrest ("**Mr and Mrs Forrest**"). The others are a company formed by Mr and Mrs Forrest, Invest in the Best UK Ltd ("**IB**"), and a former director of the Company, Mr Michael Kennedy.

4. Mrs Lock applies for an order setting aside the Assignment. She has joined, as respondents to the Application, Mr Stanley, and the Company itself but not Manolete. I raised this with counsel as an issue at the beginning of the hearing. Whilst mindful that Manolete has been informally notified of the Application - indeed, a representative was in attendance at the hearing itself - I made a direction clarifying that my determination will be subject to Manolete's rights as assignee and, more generally, any matters Manolete might seek to draw to my attention subsequently. I also made directions for the court order, following judgment, to be served on Manolete forthwith and for Manolete to be given 14 days to apply, by notice, for further relief.

5. Before me, Mr Matthew Collings QC, has appeared on behalf of Mrs Lock and Mr Joseph Curl QC has appeared on behalf of the Respondents, Mr Stanley and the Company. The hearing has been conducted remotely. They have respectively conducted their cases with considerable skill.

(2) Background

6. The factual background can be stated shortly. Mr and Mrs Lock formed the Company as a SPV in connection with a residential development at Butley Hall, Prestbury, Cheshire. The development involved converting a substantial building into flats and building three town houses.

7. To help meet the financial demands of the project, Mr and Mrs Forrest advanced monies to the Company by way of loan. It appears they initially sought to obtain some security for the loan monies by entering a restriction on the registered title to the land. Later, they formed IB. The Company then granted long residential leases to IB in respect of two residential units on the development.

8. Ultimately, the Company was unable to raise sufficient funds to meet its liabilities under the project. By November 2015, if not earlier, the Company was insolvent and, on 26th November 2015, it went into creditors voluntary liquidation. At that stage, Messrs Kevin Murphy and Martin Maloney of Leonard Curtis were appointed liquidators.

9. According to the Company's Estimated Statement of Affairs, signed by Mrs Lock on 26th November 2015, the realisable value of the Company's assets was then only £4,721. However, the Company's indebtedness on directors' loans and loans from connected creditors was estimated in the sum of £2,094,512 and its estimated indebtedness to trade and expense creditors was £408,593. In the schedule of creditors, Mrs Lock was herself listed as a creditor for the full amount owed on directors' loans of £2,094,512 and Cruden Construction Limited ("**Cruden**") was listed as a creditor for £158,814.

10. Cruden was owed monies in respect of works on the Butley Hall development and its relationship with the Company had descended into acrimony. On Cruden's petition, a winding up order was made in respect of the Company on 15th March 2016. In a witness statement filed in support of the petition, Mr Carl Brian, its chairman, contended that, as at 25th January 2015, the Company's indebtedness to Cruden amounted to £2,310,228.

11. When the Company was wound up, Messrs Murphy and Maloney ceased to hold office and, on 18th July 2016, the Secretary of State appointed Mr Stanley as liquidator. Mr Stanley had initially been nominated by Cruden, no doubt in the expectation that he would embark on a rigorous investigation of the Company's affairs and it is conceivable this affected the relationship between Mr Stanley and Mrs Lock from the outset. Mr Stanley has sought to make allegations about the co-operation he has received from Mrs Lock and her family which are strongly disputed.

12. Mindful that he might be entitled to advance a substantial claim against Mrs Lock or her family, he instructed Irwin Mitchell solicitors to act on his behalf. By letter dated 1st February 2018 to Mr and Mrs Forrest, Irwin Mitchell asserted a claim against them for £1,198,222 plus interest from 6th July 2015. In the letter, it was contended that, whilst Mr and Mrs Forrest had purported to enter into a loan agreement with the Company dated 7th September 2021 with a facility of £587,093, no such loan had been made to the Company at all. If not, it was contended that Mr and Mrs Forrest had entered into a transaction with the Company at an undervalue and the liquidator was entitled to advance claims against them for unjust enrichment and a statutory preference.

13. Mr and Mrs Forrest referred the letter to Mrs Lock and, after obtaining advice from Mr Davitt Lynch, an insolvency practitioner at Leonard Curtis, she arranged to meet Mr Stanley at his offices on Deansgate, Manchester. Prior to the meeting, Mrs Lock prepared a list of the matters to be raised. Consistently with Mr Lynch's advice that Mr Stanley should be asked whether they could buy the claims in his letter dated 1st February 2018, the twelfth item on her list was "buy claim?".

14. The meeting took place on 8th February 2018. Mrs Lock and Mr Stanley have provided differing accounts. The discussion appears to have been in general terms without concrete proposals. However, Mrs Lock contends that she specifically asked Mr Stanley whether it would be possible to purchase the claim he had threatened against her parents and Mr Stanley replied that they would need first to deal with the letter from Irwin Mitchell. Mr Stanley does not specifically deny that he was asked about the purchase of such a claim. However, he maintains that he has no recollection of it and suggests that, had Mrs Lock put such a possibility to him, this would have been inconsistent with the

general tenor of a conversation in which Mrs Lock stated that they had lost "everything" as a result of the failure of the Company.

15. For so long as the parties' testimony is un-tested in cross examination, it is not possible for me to reach conclusions about what may or may not have been discussed at the meeting and how matters were left. If, as she contends, Mrs Lock did canvass the possibility, it appears not to have made a significant impression on Mr Stanley because he never did anything to pursue the possibility further, whether with Mrs Lock or members of her family.

16. Following Irwin Mitchell's letter dated 1st February and the meeting on 8th February 2018, Mr Stanley took no steps to canvass with Mrs Lock any claims that he might have against Mrs Lock or her family arising from the insolvent liquidation of the Company. Indeed the letter dated 1st February 2018 was itself only addressed to Mr and Mrs Forrest and the claim in the letter was limited to them. No letter of claim was ever sent to Mr and Mrs Lock or, indeed, IB.

17. Almost eighteen months later, on 24th September 2019, Mr Stanley entered into the Assignment. He did so without asserting any claim against Mr and Mrs Lock or inviting Mrs Lock or her family to submit her own bid or terms of compromise for such a claim.

18. By the Assignment, Mr Stanley assigned to Manolete the rights listed in Schedule 1 to the agreement. They are as follows.

> "All and any claims that the Company and/or the Liquidator may have against (I) Alan Forrest and/or (2) Susan Forrest and/or (3) Adele Lock and/or (4) Matthew Lock and/or (5) Michael Kennedy and/or (6) Invest in the Best UK Ltd and/or any companies or individuals associated or connected with the aforementioned individuals or companies and any one or more of them. Such claims to include, but not be limited to, claims for breach of contract, breach of duty at common law, breach of fiduciary or statutory or other legal or equitable duty, any claim in fraud, whether common law or equitable fraud, conspiracy by unlawful means and/or any claim under the Insolvency Act 1986 and/or Companies Act 2006."

19. By way of clarification, Mr Matthew Lock historically held office as a director of the Company in addition to Mrs Lock herself as, indeed, at one stage, did Mr Michael Kennedy.

20. The consideration for the Assignment was set out in Schedule 2. This encompassed the sum of £30,000 as "initial consideration" with a scheme for the payment of additional consideration based on a percentage of the net proceeds of any successful claim ranging from 50% in the event that the net proceeds amount to £150,000 or less to 70% if greater than £300,000. The date for payment was not fixed but, in his witness statement dated 28th June 2021, Mr Stanley confirmed that the initial consideration has been paid.

21. There was provision, in Clause 5 and Paragraph 3 of Schedule 2 to the Assignment, for Manolete to offer to assign its rights back to the Company for £1, if at any time, it decided it no longer wished to pursue the Proposed Claims.

22. On 20th January 2021, Manolete commenced proceedings ("**the Main Proceedings**") in respect of the Company, against Mr and Mrs Lock, Mr and Mrs Forrest and IB. By its claim in the Main Proceedings, Manolete contends that the long leases were transactions at an undervalue within the meaning of *Section 238* of the *Insolvency Act 1986* and seeks an order restoring to the position to what it would have been had the Company not granted the leases. Further or in the alternative, it seeks a declaration that the repayment of a loan from Mr and Mrs Forrest to Mr and Mrs Lock of £1,198,222 - somehow treated as a sum due on directors' loan account - be treated as a statutory preference and declaratory relief based on breaches of the directors' statutory, fiduciary and common law duties to the Company. On this basis, it seeks an order requiring Mr and Mrs Lock to repay or restore sums of £800,000 and £328,000 on the footing that these amounts were applied from the Company's funds for the Respondents' own use together with an order setting aside the two leases and an order causing them to pay the sum of £1,198,222.

23. The Main Proceedings are listed for trial in December this year.

(3) Assignment

24. It is historically well established that, following the liquidation of a company, office holders are entitled to assign causes of action vested in the company. By virtue of *Section 246ZD* of the *Insolvency Act 1986*, they are also entitled, with effect from 1st October 2015, to assign statutory claims that arise as an incident of their office. This includes claims under *Section 238* and *239* in respect of transactions at an undervalue and preferences. In *Totalbrand Ltd (in liquidation) [2020] EWHC 2917 (Ch), [2021] 2AER (Comm) at [13],[24]*

and *[29],* Snowden J (as he was) referred to the *Economic Impact Assessment (IA No: BIS INSS007)* of the Insolvency Service on 16 April 2014 in order to explain the legislative policy behind the new regime. It can be seen that this was to improve the prospects of such claims being advanced so as to achieve a better outcome for creditors and enhance corporate governance.

(4) Mrs Lock's challenge

25. *Section 167(1)* and *Schedule 4* to the *1986 Act* confer a wide range of statutory powers on any liquidator in a winding up. They include powers of compromise (*Paras 2* and *3*), powers to bring and defend legal proceedings (*Para 4*) and power to bring statutory proceedings under the Insolvency Act (*Para 3A*), powers to sell the company's property (*Para 6*) and, more generally, the power to do all such things as may be necessary for winding up the company's affairs and distributing its assets (*Para 13*). Their powers to sell the company's property include the assignment of causes of action vested in the company and the right to bring proceedings under *Section 212* of the 1*986 Act* for misfeasance or breaches of duty in relation to the company. Although the need for sanction has now been removed in all cases, the exercise of their statutory powers is subject to the control of the court and any creditor or contributory is entitled to apply to the court with respect to the exercise of such powers under *Section 167(3).* As officers of the court, they are also subject to the court's control under *Rule 7.76(1)* of the *Insolvency (England and Wales) Rules 2016.*

26. Mrs Lock seeks to set aside the Assignment under the statutory powers specifically conferred on the Court by *Section 168(5)* of the *1986 Act. Section 168(5)* provides as follows.

> "If any person is aggrieved by an act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse or modify the act or decision complained of, and make such order in the case at it thinks just".

27. Mr Collings submits that Mrs Lock has standing to make the application because she is a creditor of the Company and Mr Stanley's decision to enter into the Assignment or his act of doing so should be reversed on the basis they are perverse owing to his failure to take

legal advice or canvass the obvious market for an assignment, namely the target for the relevant claims.

28. These submissions draw substantial support from the judgment of Nourse LJ (with whom Millett LJ agreed) in *re Edennote [1996] 2 BCLC 389*. As with the present case, the liquidator of an insolvent company had assigned its rights in a claim and unsecured creditors of the company applied for an order setting aside the assignment under *Section 168(5)* of the *1986 Act.* At first instance *[1995] 2 BCLC 248*, the creditors obtained such an order on the basis that they had standing to apply for relief and the liquidator should have approached the respondents to the claim itself to see whether they would be willing to negotiate a settlement before peremptorily entering into the assignment. The Court of Appeal dismissed the assignee's appeal. They were satisfied that, as creditors, the applicants had standing to make the application and concluded that, by entering into the assignment without first obtaining legal advice, *396d-f*, and taking into account the possibility of a better third party offer, *394j,* the liquidator had done something "so utterly unreasonable and absurd that no reasonable person would have done it", *394j*.

(5) Standing

29. I must first consider whether Mrs Lock has standing to make the Application.

30. In *re Edennote Ltd [1996] 2 BCLC 389* at *393h-j*, Nourse LJ confirmed that "'any person aggrieved'" in *Section 168(5)* of the *1986 Act* "can be seen to be mere shorthand for 'any *creditor*, debtor or other person aggrieved'" (My italics). At *393f-g*, counsel for the appellant submitted that, whilst the applicants were creditors, "they brought the application not as creditors but as persons who had not been given an opportunity to make an offer for the asset" and thus did not have standing. Nourse LJ took a different view, apparently on the basis they were entitled to "apply in a dual capacity", *393f-g.*

31. However, it has since been established that where, in a case such as this, an applicant asks the court to exercise a statutory power, it is not enough to consider whether the applicant is within the category of persons entitled to make the application. It is also necessary to assess whether the applicant has "a legitimate interest in the relief sought". This can be seen from the judgment of the Privy Council in *Deloitte & Touche AG v Johnson [1999] 1 WLR 1605* at *1611E.* Whilst the *Deloitte* case related to the standing of a debtor to apply

for the removal of a liquidator in respect of a company registered in the Cayman Islands and the judgment of the Privy Council was initially of no more than persuasive authority, it has now been authoritatively endorsed by the Court of Appeal in *Brake v Lowes [2021] PNLR 10*, itself a case relating to the standing of applicants to make claims under *Section 303(1)* and *168(5)* of the I*nsolvency Act 1986.*

32. In the *Deloitte* case, there were no express statutory qualifications for the category of persons who were entitled to make the application. However, the applicant was adjudged not to have a legitimate interest in the relief sought. At *1611H*, Lord Millett observed as follows.

> "The only persons who could have any legitimate interest of their own in having the liquidators removed from office as liquidators are the persons entitled to participate in the ultimate distribution of the company's assets, that is to say the creditors….The plaintiff is not merely a stranger to the liquidation; its interests are adverse to the liquidation and the interests of the creditors. …it has no legitimate interest in the identity of the liquidators, and is not a proper person to invoke the statutory jurisdiction of the court to remove the incumbent office-holders".

33. Mr Curl submitted that Lord Millett's analysis in *Deloitte* captures two key governance principles. Firstly, to have standing, the applicant must not be a stranger to the estate; it must have a legitimate interest in it. This is typically shown if the applicant shows it is a creditor. Secondly, the relevant interests are the collective interests of the estate as a whole which means the class or classes with an interest in the assets. Where an applicant is acting otherwise than in accordance with those collective interests, he submitted that it is not a proper person to invoke the court's jurisdiction to control the liquidation. In my judgment, each of these statements of principle is well established.

34. In the light of Lord Millett's observations in *Deloitte*, the test of standing is more nuanced than might previously have been appreciated. It is not merely a test of status; it requires a wider examination of an applicant's interest in making the application. Not only must the applicant be a member of the class. Its interest in the outcome of the application must also be aligned with the interest of the class as a whole and it must not have a collateral interest which transcends the class interest.

35. For cases in which these principles or analogous principles have been applied, Mr Curl referred me to the judgment of Nicholas Strauss QC in *Walker Morris (a firm) v Khalastchi [2001] 1 BCLC 1* and the Court of Appeal in *Brake v Lowes (supra).*

36. In *Khalastchi*, the applicants were a firm of solicitors who sought to use their status as creditors in the modest sum of £237, to apply for directions that they were not at liberty to release documents to the liquidator. The Deputy Judge declined to grant the applicants relief, partly on the basis that the solicitors were not acting as creditors but in order to advance the interests of possible debtors.

37. The decisions under appeal in *Brake v Lowes (supra)* included a determination that unsecured creditors of a limited liability partnership, in liquidation, did not have standing to challenge decisions of the liquidators because they were being funded by parties with an adverse interest to the creditors as a whole. On the basis there was "unchallenged evidence to the effect that the Unsecured Creditors were seeking to advance the interests of the bankrupts rather than their own", Asplin LJ adjudged, at *[103]-[104],* that the judge at first instance was correct to do so. Henderson and Floyd LJJ agreed.

38. As an application for directions authorising solicitors to withhold documents from the liquidator for the benefit of possible debtors, the *Khalastchi* application was inherently unlikely, on its face, to have been made in support of the creditors' interests or in alignment with their interests as a class. This is less obvious in the *Brake* case where the applicants sought to challenge a transaction for the disposal of land. However, in the latter case, evidence was admitted, at first instance, that the application was prompted by the interest of third parties in acquiring the land. This would again have been extraneous to the interests of the creditors. Having asked herself, at [100], whether the "Unsecured Creditors…have a legitimate interest in the relief sought in the…Application", Asplin LJ concluded that "it seems to me that that is very doubtful" stating that a direction requiring the Liquidators to accept a third party bid "must be adverse to the interests of the liquidation estate and the unsecured creditors as a whole…"

39. Whilst the judgments in the *Khalastchi* and *Brake* cases are not narrowly based on the principle identified by Lord Millett in *Deloitte* since they involve an assessment of the conduct of the applicants in addition to their interests as creditors, Mr Curl is entitled to

rely upon them as authority for the proposition that, to establish she has standing to make the application, Mrs Lock must show that she has a legitimate interest in the relief sought aligned with the interest of the creditors as a whole.

40. In my judgment, she has failed to do so. The Main Proceedings are against Mrs Lock, her husband, her parents and IB, a company of which they are the only shareholders and directors. The claim has been brought to obtain declaratory relief against Mrs Lock and her husband for alleged breaches of fiduciary, statutory and common law duties arising from specific transactions relating to assets of the Company. There is also a claim that the leases were transactions at an undervalue and that the repayment of a loan on directors loan account was a preference. It is obvious from the Application itself and the overall context in which it was made, together with Mrs Lock's two witness statements in support of the Application, that her interests are not aligned with the interests of the creditors as a whole and her real complaint is with the pursuit of the substantive claims in the Main Proceedings against herself and her family rather than the contractual arrangements between the Liquidator and Manolete. Once advised, by Irwin Mitchell's letter dated 1st February 2018, that Mr Stanley had a claim against Mr and Mrs Forrest, Mrs Lock was motivated more by an impulse to protect her parents than to maximise the return for the Company's creditors. It is no doubt for this reason that she initially sought to explore the possibility of purchasing the claim. She may also have wished to defend herself and her husband as respondents to a potential claim. However laudable this might be perceived, it is inconsistent with the collective interests of the creditors as a whole and, more specifically, their interest in the relief sought. No comparable point appears to have been taken in *re Edennote Ltd [1996] 2 BCLC 389* and, had it been, it is a matter of speculation whether the same outcome would have been achieved.

41. I am thus satisfied that Mrs Lock does not have standing to make the Application and, for that reason alone, the Application must be dismissed.

(6) Perversity

42. However, on the hypothesis that, contrary to my above conclusion, Mrs Lock has standing to make the Application, I must next consider whether the Assignment should be set aside for perversity.

43. In his judgment, at first instance, in *Re Edennote Ltd [1995] 2 BCLC 248* at *256 e-f*, Sir John Vinelott referred to the judgment of Jessel MR in *Re Peters ex p Lloyd (1882) 47 LT 64* as authority for the proposition that the court's powers to set aside an act of a trustee in bankruptcy or liquidator is to be sparingly exercised. This includes the Master of Rolls' comment that "…the court will not interfere unless the trustee is doing that which is so utterly unreasonably and absurd that no reasonable man would so act". On this basis, Sir John Vinelott stated, at *264g*, that "it is only in very exceptional circumstances that the court will interfere with the exercise by a liquidator of his discretion to sell the assets of an insolvent company".

44. On any analysis this is a formidable test. However, Sir John Vinelott concluded that the test was satisfied on the facts before him. By way of explanation, the case had a number of conspicuous features. The liquidator entered into the transaction to assign the company's causes of action in return for a nominal payment of no more than £7,000 and an undertaking to pay only 10% of any net proceeds that he might recover from the assigned claim. This is every reason to suggest that this did not meaningfully reflect the value of the claim. At *264h-j*, Sir John Vinelott observed that the claim had a very considerable nuisance value and that a respondent to the claim was willing to pay £75,000 to avoid the risk. Part of his explanation for entering into the assignment was that he faced an application for security for costs and feared that unless means could be found to fund the litigation, he would lose the benefit of the claim apparently without it occurring to him it would be open to him to approach the applicants with a view to compromise. As it happens he did not approach the applicants or, indeed, any associated party to explore the possibilities that might be available to him. There is a suggestion that was because he feared he would then lay himself open to a claim but he did not initially take legal advice on the point and the propriety of doing so was not considered.

45. On appeal, Nourse LJ was satisfied that the Judge had applied the correct test and done so correctly, *[1996] 2 BCLC 389* at *396f. At 396c-f,* Nourse LJ considered that it was particularly significant that the liquidator had failed to take advice and thus failed to understand the tactical implications of the application for security for costs. Had he done so, it would have become obvious that he should make an approach to the applicants themselves.

46. In the present case, as in *Edennote (supra),* Mr Stanley did not approach Mrs Lock or any members of her family nor, indeed, IB with a view to compromising, selling or otherwise disposing of any of the assigned claims prior to the Assignment. He did not even send a letter of claim to Mr and Mrs Lock or the Company prior to the Assignment or do anything to warn them that he was minded to make such a claim or assign it to a third party. His explanation, in Paragraphs 20.1-20.3 of his second witness statement is as follows.

> "20.1 the [Respondents to the Main Proceedings] were well aware of the Claims, including as a consequence of having seen the letter to Mrs Lock's parents dated 1 February 2018, which had invited sensible proposals for settlement, and no proposals had been made
>
> 20.2 Mrs Lock had emphasised her impecuniosity when we had met on 8 February 2018; and
>
> 20.3 in any event even after the Assignment had been negotiated in principle, Mrs Lock's parents (who had solicitors acting at the time) were put on-notice from 21 May of the proposal to assign the Claims to a funder if settlement was not achieved within a reasonable period, and no proposals for settlement (whether by way of assignment or otherwise) were made".

47. Mr Collings submits that this is an unsatisfactory explanation and, in my judgment, he is correct to do so.

48. Mr Stanley's assertion that each Respondent to the Main Proceedings was "well aware of the Claims" is misleading. "The Claims" was defined, in Paragraph 11 of Mr Stanley's witness statement, so as to comprehend all and any claims that the Company and Mr Stanley himself, as liquidator, might have against Mrs Lock, her husband and her parents". Whilst it is true that he sent the letter dated 1st February 2018 to Mr and Mrs Forrest, the letter was addressed to Mr and Mrs Forrest only, not to Mr and Mrs Lock or IB. No such letter was sent to Mr and Mrs Lock. Whilst, at one point in the letter, there was a request for payment from IB, the letter did not contain any such request to Mr and Mrs Lock. No written demand or claim was ever sent to them nor, indeed, was any specific claim canvassed in the letter against themselves personally.

49. The assertion that Mrs Lock "emphasised her impecuniosity" is apparently based on her comment at the meeting on 8th February 2018 that she and her family "had lost everything". However, this comment was only made after Mr Stanley's letter dated 1st February 2018 which was itself addressed to Mr and Mrs Forrest only. In any event, there is nothing to suggest Mr Stanley sought to explore Mrs Lock's financial position with her or, indeed, the options that might be available with a view to obtaining finance. Elsewhere Mr Stanley contends that Mrs Lock did not fully co-operate with him in connection with the liquidation. However, this is disputed and would not, in itself, warrant his omission to approach Mr and Mrs Lock or, indeed, Mr and Mrs Forest to canvass the terms on which they might be willing to compromise or purchase the claims against them. Nor, indeed, does Irwin Mitchell's letter dated 21 May 2019 notifying Ellen Court Partnership, on behalf of Mr and Mrs Forrest, that the liquidator had agreed to assign his claims against Mr and Mrs Forrest to a specialist litigation insolvency funder.

50. It is implicit from the observations of Mr Stanley in his witness statements that he only approached Cruden and Manolete with a view to the sale of its claims. With that end, he did not approach anyone else.

51. In these circumstances, Mr Collings submits that the liquidator's omission to canvass the market for the claims is closely analogous to the omissions of the liquidator in *Re Edennote Limited (supra*) and, more specifically, his omission to canvass the potential targets, namely Mr and Mrs Lock, Mr and Mrs Forrest and IB, before entering into the Assignment notwithstanding the interest Mrs Lock had shown at the meeting on 8th February 2018, satisfies the test of perversity.

52. However, this is a formidable test which reflects the reluctance of the court "to substitute its judgment for the liquidators' on what is essentially a businessman's decision", *Re Buckingham International plc (in liquidation) (No 2) [1998] 2 BCC 943, 961.* It would require me to be satisfied that, by entering into the Assignment without first canvassing the available options with Mr and Mrs Lock or Mr and Mrs Forrest, the action taken by Mr Stanley was "so utterly unreasonable and absurd that no reasonable man would do it". Notwithstanding the skill with which Mr Collings' submissions have been presented, I am not satisfied that this has been established in the present case. On the hypothesis that

Mrs Lock were to have standing to make the Application, I would not be minded to set aside the Assignment.

53. Firstly, whilst Mr Stanley has not provided a satisfactory explanation for his omission to approach Mrs Lock or other family members to explore the available options, he plainly considered that Mrs Lock would not have sufficient funds to purchase or compromise the claims and that, in any event, he had little prospect of successfully negotiating such an agreement with Mrs Lock or, indeed Mr Lock and Mr and Mrs Forrest. No doubt, it is for these reasons that he did not approach them and it cannot be suggested there was no foundation at all for him to have reached such a view. There is nothing to suggest that Mrs Lock or, indeed anyone other than Manolete has offered to purchase or compromise the claims.

54. Consistently with this proposition, had Mr Stanley sought to canvass or explore with Mr and Mrs Lock or Mr and Mrs Forrest the options that might otherwise have been available, there is nothing to indicate he would have achieved better terms than he has obtained from Manolete. In this respect, the case is different from *Edennote (supra)* in which there was evidence that a respondent was willing to pay £75,000.

55. Secondly, whilst he may not have approached Mrs Lock or her family, Mr Stanley did examine other options. From the outset there were insufficient funds available for him to fund the litigation on the usual fee paying basis. He examined the possibility of entering into a CFA but was unable to raise sufficient funds for an ATE to comprehensively cover his litigation risk. He appears only to have approached Cruden and Manolete to ascertain the terms on which they would be willing to enter into an assignment. However, he was ultimately able to negotiate with Manolete a comprehensive commercial agreement incorporating a payment scheme which appears, on its face, to provide a reasonable rate of return for creditors ranging from 50% to 70% of the net proceeds of a claim after the payment of initial consideration of £30,000. No specific challenge has been advanced to the terms agreed. This is very different from the agreement that appears to have been reached in *Edennote (supra)* for the assignee to make a nominal payment of £7,000 and to pay 10% of the net proceeds of the assigned claim.

56. Mr Collings submitted that there is nothing to suggest Mr Stanley obtained legal advice about the steps he should take to negotiate with Mrs Lock or her family. In this respect, the case is superficially similar to *Edennote*. However, unlike *Edennote*, there is also nothing to suggest that this arose from a failure to understand his legal rights and obligations.

(7) Disposal

57. The Application is dismissed.