Neutral Citation Number: [2025] EWHC 467 (Ch)

Case No: CR-2017-003729

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

Rolls Building
London
EC4A 1NL

Date: 3 March 2025

Before :

DEPUTY INSOLVENCY AND COMPANIES COURT JUDGE AGNELLO KC

IN THE MATTER OF AN APPLICATION MADE BY MICHAEL R HAMMERSLEY PURSUANT TO CPR 23.12

- - - - - - - - - - - - - - - - - - - -

JUDGMENT

- - - - - - - - - - - - - - - - - - - -

Introduction

1. This is the judgment in relation to the application made by Mr Michael R Hammersley seeking permission pursuant to the limited civil restraint order dated 7 February 2022 to make an application (the proposed claim) in the proceedings case number CR-2017-003729 in relation to Paragon Offshore PLC. The limited civil restraint order against Mr Hammersley was made by me pursuant to CPR 23.12, paragraphs 2.2(1) and 2.2(2) of Practice Direction 3C and following an application by the Joint Liquidators of Paragon Offshore

PLC on the grounds that Mr Hammersley had made at least two applications held to have been totally without merit. Mr Hammersley has recently filed a further application seeking permission to issue a summary judgment application. For the reasons set out below, I refuse permission to Mr Hammersley to issue either of the proposed proceedings/claims.

2. I will deal with the original application of Mr Hammersley and then turn to the second application he has made, seeking summary judgment for recognition as a creditor of the company. He seeks permission to issue, file and serve a claim form, particulars of claim and accompanying evidence as against Mr David Philip Soden, one of the former joint liquidators of Paragon Offshore PLC (Paragon Parent), and Paragon Offshore Limited (New Paragon). He sets out that he would be seeking to apply for pre-action disclosure and this is set out in some detail in Mr Hammersley's 10th witness statement dated 10 September 2024. In order to deal with the permission application, I need to set out the background briefly.

3. As is set out in more detail in my judgment dated 13 August 2021, Paragon Parent was in financial difficulties and had sought protection pursuant to Chapter 11 of the US Bankruptcy Code in Delaware. After various earlier plans, the Fifth Plan was filed in the US Bankruptcy Court on 2 May 2017. The Fifth Plan was essentially a debt for equity swap involving the transfer of certain assets to senior creditors (being the secured lenders and senior noteholders) including cash payments, equity in New Paragon and reinstated debt as well as certain other interests in consideration for the release of certain of Paragon Parent's financial liabilities to those senior creditors. The Fifth Plan provided for New Paragon to be incorporated and thereafter for its shares to be distributed amongst Paragon Parent's senior creditors. Paragon Parent had a 100% interest in Prospector Offshore Drilling Sarl, a holding company for the Prospector group. The Fifth Plan contemplated that these shares were to be transferred from Paragon Parent to New Paragon. The application to the High Court for an English administration order to be made was part of the Fifth Plan, but it was an independent application to the High Court. Paragon Parent had to succeed on the basis of the evidence it filed to persuade the court that Paragon Parent was insolvent and in the exercise of the Court's discretion, an

administration order should be made. The Fifth Plan also included a rationalisation of Paragon Parent's inter-company liabilities which allowed for the reduction of these liabilities from US$820 million to US$500 million approximately. The claims in respect of these inter-company liabilities were then to be transferred to New Paragon by means of a loan note instrument. Instead of Paragon Parent owing money to its subsidiaries, these inter-company liabilities would be transferred to New Paragon.

4. After considering the evidence, the Judge (Mrs Justice Rose as she then was) made an administration order on 23 May 2017. As I have stated in my earlier judgments and above, the making of the administration order required the Court to be satisfied that the company was insolvent. The evidence before the Court on that date set out the liabilities of Paragon Parent. The Judge was satisfied that Paragon Parent was insolvent. Previously in the US Bankruptcy Court hearings, the issue of insolvency had also been considered and dealt with. Mr Hammersley claimed that an order should be made in the US proceedings for formal representation for the shareholders, of which he was one. This was refused by the US Judge because effectively, 'equity is simply out of the money'. Reference will be made below to certain passages in my previous judgments in this case. Those judgments set out a much more detailed background as well as considering and analysing the financial documents which form the basis of the findings by both the US Court, the Court who made the administration order and also before me relating to challenges by Mr Hammersley as to the status of creditors, effectively challenging the insolvency issue and the determination that the shareholders had no interest in the insolvent estate of the company.

5. In considering the application made by Mr Hammersley, I have considered his previous applications which I have held were totally without merit and also considered the judgments which I have handed down in these proceedings. What I have set out above and below is a summary of the applications made before me and the determination of those applications.

6. On 27 February 2020, the Former Administrators of Paragon Parent (which included Mr Soden) applied for their discharge pursuant to paragraph 98(2)(c) of Schedule B1 of the Insolvency Act 1986. The Former Administrators were by then the Joint Liquidators. That application was heard before me over several

days and was opposed by Mr Hammersley who filed extensive evidence, documentation and lengthy skeletons setting out his case. This included his case that Paragon Parent was not insolvent and effectively he had a claim in the administration as a shareholder. I held that Paragon Parent was insolvent at the relevant times being during the Chapter 11 process and when it sought and obtained an administration order in the High Court. My judgment dated 20 July 2020 sets out in some detail the evidence I considered, the submissions made and my determinations. I dismissed Mr Hammersley's objections to the discharge and made the order for discharge.

7. Mr Hammersley then issued an application seeking to review, vary or rescind the order I made in July 2020. The Former Administrators applied for summary dismissal of that application to review, vary or rescind my order of July 2020. On 19 October 2020, I summarily dismissed Mr Hammersley's application to review, vary or rescind my order discharging the Former Administrators. One of the determinations I made in that judgment was that I stated that there was no change in circumstances and essentially Mr Hammersley was seeking to re-run the arguments he had put before me and failed on in the July 2020 judgment. These related to his argument that in some way Paragon Parent was not insolvent and therefore he had a claim as a shareholder which had value. Mr Hammersley then made a further application pursuant to rule 14.11 of the Insolvency Rules seeking the exclusion of the 'loan note instrument' held by New Paragon (and other consequential relief). Mr Hammersley was effectively seeking to assert that he was a creditor of Paragon Parent by seeking determinations by me that on his construction of the finance documents, certain creditors' claims had been discharged. He also sought from me a determination that he was a creditor of Paragon Parent under his 'securities fraud claim'.

8. The Joint Liquidators of Paragon Parent issued a summary judgment application relating to the Insolvency Rule 14.11 application which I granted after a further hearing in March 2021. The aim behind the applications and opposition of Mr Hammersley relates to his assertion that Paragon Parent's shareholders (of which he is one) had been deprived of a return and/or some favourable outcome under the Chapter 11 Fifth Plan as well as under the English Administration of Paragon Parent. I also dismissed his claim that he was a creditor pursuant to his 'securities fraud claim'. This had been dealt with under the US Chapter 11 Plan.

9. It is clear, not only from the brief summary above, but also from a reading of the various judgments, that Mr Hammersley has sought to argue on many occasions that Paragon Parent was solvent so that his interest as a shareholder has value. He has also sought to assert a creditor claim based on a securities fraud claim which has been dealt with by the US Court. The effect of these rulings is that Mr Hammersley has been held not to be a creditor of Paragon Parent.

10. Mr Hammersley seeks permission to issue a further application, being a claim against Mr Soden and New Paragon. He submits it is about natural justice. He relies, as is set out in his written submissions, on what he alleges is a newly discovered interview given by Mr Soden's solicitors in 2017 which he asserts shows that Mr Soden's legal team sent emails to the US Bankruptcy judge ,'briefing the US Judge and explaining how the shareholders were to be treated in the UK administration'. Mr Hammersley seeks to rely on what he alleges are secret briefings which he says influenced the US Judge into believing that the shareholders would be dealt with in the English Administration. These alleged comments related to one of the earlier plans and not the Fifth Plan. In one of the earlier plans, there was some recovery for shareholders, but by the time that the Fifth Plan was presented to the US Bankruptcy Court, there was, under that Plan, no recovery at all for the shareholders. They were, under that Plan, 'out of the money'. For further details about the history of the different Plans, reference is made here to my July 2020 judgment.

11. Mr Hammersley submits that what he asserted was erroneous information relating to the treatment of shareholders under the UK Administration regime was given to the US Bankruptcy Judge and this entitles him, on the grounds of natural justice, to re-open the issues determined and set aside all prior decisions and orders. He asserts that his application is about depriving him (and other shareholders) of benefits. Those benefits can only be based on Mr Hammersley being a creditor of the company. He asserts in his 10th witness statement that, '*I file this evidence in my capacity as an unpaid former creditor of Paragon Offshore plc ("Paragon" or "Company") and now an alleged creditor of the Proposed Respondents based on a new proof of debt I filed in July 2022.'*

12. Mr Hammersley asserts that he is seeking to make a *Pulsford* claim (based on *Pulsford v Devenish [1903] 2CH 625)*. He describes such a claim being when a liquidator causes loss to a creditor by disregarding his personal rights in distributing assets without regard to a claim which the creditor had made in time and which had not been rejected. Mr Hammersley submits this gives him as a creditor a personal right of action as against the liquidator for breach of statutory duty.

13. The difficulty for Mr Hammersley in seeking permission to run such a claim is that I have determined that Mr Hammersley is not a creditor of Paragon Parent. The new claim which Mr Hammersley seeks to make does not alter his lack of status as a creditor. His new claim relates to what he submits is some sort of representation made before the US Bankruptcy Judge in relation to an earlier plan. The findings and decisions made by the US Bankruptcy Judge in relation to the Fifth Plan and also the decision made in England to make the administration order remain valid. In my judgment, there is a lack of merit in what Mr Hammersley asserts is a claim based on natural justice. His proposed claim does not allow him to claim that he is a creditor because to do that, he would need to set aside or successfully appeal many of the judgments, including those of mine which have determined that he is not a creditor and that Paragon Parent was hopelessly insolvent at the time. Moreover, the insolvency position of the company was before the Judge who made the Administration Order. The Judge did not rely on the US bankruptcy judgments, but was satisfied on the evidence before her that the company was insolvent. That is a pre-requisite for the administration order being made. Equally, in reaching my decisions as set out in the various judgments in this case, I have considered the evidence of insolvency presented to me and made my decision based on that evidence.

14. Mr Hammersley submits that his proposed claim does not relitigate issues but relates to Mr Hammersley's private rights on his *Pulsford* claim. My judgments made it clear that Mr Hammersley is not a creditor. So his claim under *Pulsford* lacks merit. *Pulsford* was about a creditor of the company who had not been dealt with by the liquidator due to the liquidator's negligence. That is far from the position here where there have been extensive hearings relating to the insolvency of Paragon Parent and relating to claims made by Mr Hammersley asserting that he is a creditor of Paragon Parent.

15. As is usefully set out in the Weil Gotshal & Manges (Europe) LLP's letter to Mr Hammersley dated 6 September 2024, I dealt with Mr Hammersley's lack of creditor claim in my judgments :-

(a) Discharge judgment, paragraph 54 ([2020] EWHC 1925 (Ch)

'As I have already set out above, Mr Hammersley makes a series of unsubstantiated and wide reaching allegations relating to what he perceives to be fraudulent conduct by both the Former Administrators, their lawyers and Counsel. I have already set out above that in my judgment there is no evidence before me relating to these unsubstantiated allegations. It appears to me that the real basis of the serious allegations being made by Mr Hammersley is his refusal to accept that the conduct of all these professionals was in accordance with the Fifth Plan and the UK Implementation Agreement. This is because ultimately Mr Hammersley has failed to defeat the Fifth Plan. He remains convinced in his own mind that in some way there should have been a distribution to shareholders. His fraud and misconduct allegations stem in my judgment from his failure to accept that he has failed in his objections to the Fifth Plan, its modification and his continuing failure to obtain the appointment of an equity committee. The passages which I have set out from the judgments of Judge Sontchi demonstrate a failure on the part of Mr Hammersley to accept the contents of the Fifth Plan and its operation. In my judgment, there is not a shred of evidence supporting these serious yet unsubstantiated allegations. In fact, the evidence before me demonstrates very clearly that the Former Administrators, their lawyers and Counsel, have acted with the professionalism and integrity expected of them. In conclusion none of the grounds raised by Mr Hammersley have any merit as being valid grounds for preventing the discharge of the Former Administrators. I therefore direct that their discharge takes place 14 days after this judgment has been handed down.'

(b) Judgment 13 August 2021, paragraph 30 ([2021] EWHC 2275 (Ch))

"*Mr Hammersley also sought to persuade me that his 'securities fraud' claim gave him standing as a creditor. According to the proof of claim forms filed in*

the Chapter 11 proceedings, this claim related to the alleged violations under United States law. However, this assertion by Mr Hammersley runs against the fact that his claim was submitted and dealt with the US Bankruptcy proceedings (as set out in paragraph 26 of Mr Soden's sixth witness statement). The claim was subordinated to the holders of general unsecured claims by the order dated 30 May 2017 of the Honourable Judge Sontchi and discharged by section 10.3 of the Fifth Plan."

(c) Judgment 16 June 2022, paragraph 11 ([2022] EWHC 1498(Ch))

"*11. As set out in my judgment of 13 August 2021, the Securities Fraud Claim was first subordinated to the claims of the general unsecured creditors and then discharged by section 10.3 of the Fifth Plan. Accordingly, there is no entitlement on the part of Mr Hammersley to any distribution in respect of the same. I dealt with this matter and considered the terms of section 10.3 in my judgment. As submitted by Mr Arnold, unless those determinations which go against Mr Hammersley are the subject of a successful appeal and/or review, Mr Hammersley has no realistic prospect of success in relation to his application seeking the proposed distributions.*"

16. In my judgment, the proposed claim which Mr Hammersley seeks to bring is in effect an attempt to go behind those judgments and re-litigate the issues already determined. His reliance upon it being in some way a *Pulsford* claim lacks substance. Reliance on what he asserts were representations made relating to the position of shareholders does not, in my judgment enable Mr Hammersley to have grounds to set aside the judgments and orders of this Court. The position remains that Paragon Parent was hopelessly insolvent. This was the position in the evidence before the US Bankruptcy Judge when the Fifth Plan was before it. Furthermore, I considered this issue on various occasions. Mr Hammersley's proposed claim is another attempt to go behind these clear determinations that the company was insolvent at the time and he has no claim as a creditor.

17. Based on the above, there is no need for me to consider his claim in relation to the Third Parties (Rights against Insurers) Act 2010. I should also add that there is no merit in any action for pre action disclosure bearing in mind that the proposed claim itself is totally without merit.

18. By further documents filed at the Court, Mr Hammersley also seeks summary judgment against the parties on the grounds that he asserts they should have admitted a claim by him. Essentially, as is set out in paragraph 7 of his written submissions, Mr Hammersley asserts that his claim was not discharged in the company's bankruptcy (insolvency) proceedings. In my judgment, this new proposed claim is equally totally with merit. The status of Mr Hammersley's claim as against the company, Paragon Parent, was dealt and determined by me in his various applications. None of them have been the subject of a successful appeal.

19. In conclusion, I refuse Mr Hammersley permission to bring the proposed claim or the summary judgment claim. They are both totally without merit and merely demonstrate why the limited civil restraint order needs to be kept in place.