

Jane Giret QC

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Jane is the Head of our Company & Insolvency Group and has particular expertise in company, corporate and personal insolvency and partnership law. She also deals with general chancery and commercial litigation. A major focus of her work is company directors and their conduct, including directors' fraud and disqualification proceedings. Her expertise also includes shareholder disputes and complex receiverships and administrations. She has a full non-contentious corporate advisory practice. Jane consistently features as a leader in the fields of company and insolvency in Chambers & Partners and Legal 500, where she is noted for her 'pragmatic approach', for being 'a determined fighter', an 'excellent communicator and technically very adept'.

Heading up the company and insolvency group, Jane Giret QC "brings a wealth of experience to the table." An "approachable and client-friendly" silk, she is congratulated for "exploring the issues and working around problems, rather than just focusing on what she's been asked to do." (Chambers & Partners 2009)

Jane Giret QC has a broad practice that covers company law and chancery matters, among other areas. "A really strong advocate who gets the job done quickly and efficiently," she handles both insolvency and company law effectively. (Chambers & Partners 2009)

Jane Giret QC is "very energetic and determined." According to peers, she has "solid technical skills and great experience." (Chambers & Partners 2008)

Jane Giret QC heads an 11 strong team of various levels of seniority, and is credited with being 'able to digest tons of material, and pick the issues in no time'. (Legal 500 2007)

Insolvency:

Jane has extensive experience in all areas of insolvency, particularly on the corporate side. In corporate rescue matters she undertakes direct access work for insolvency practitioners and works closely with them and directors in seeking to achieve the preservation of failing companies either by way of administrations, voluntary arrangements or receiverships. Where these fail she has worked in all areas arising out of liquidations. A recent case on costs and expenses of a liquidator in the Court of Appeal is *Lewis v the Inland Revenue*. She represented a successful landlord in *Lomax Leisure Ltd* - overturned when the Insolvency Act 2000 came into force. She represented the debtor before the Court of Appeal in *Shierson v Vleiland-Boddy* concerning a change of Centre of Main Interests. She has acted for several ailing football clubs, or shareholders and directors of football clubs.

Company:

Jane's practice in company law focuses mainly on the litigation side but she has considerable experience in advising directors and shareholders and companies on all areas of company law affecting the operation of public and private companies. On the litigation side she has been involved in many shareholder dispute cases. Reported cases include *Arrow v Blackledge*, *Macmillan v Bishopsgate* - part of the 'Maxwell' litigation. She has advised on and obtained orders relating to capital reductions and reconstructions and schemes of arrangements.

Directors:

She has particular expertise in dealing with issues arising out of directors' duties, powers and liabilities covering the whole spectre of company management and administration, including the inter-relationship between directors and shareholders. Litigation in this area is mainly centred around section 459/994 petitions. She has considerable experience representing directors subject to company director disqualification proceedings both at trial and in negotiation of *Carecraft* compromises.

Cases for Jane include:

Thakrar

Jane Giret QC has been involved in ongoing litigation for more than 20 months, acting for the trustee in bankruptcy of a dishonest accountant (the bankrupt). There are now 29 interested parties in this major fraud. The trustee has joined the litigation for the purposes of obtaining a declaration that she, as trustee, is the beneficial owner of the shares in an offshore company which owns a substantial property portfolio. She claims the bankrupt procured the set up to “hide” the properties from his creditors. In a Judgment handed down in October 2007 she obtained the declaration. In a last ditch attempt to defeat the trustee, the bankrupt procured the out of court appointment of administrators. A successful application under paragraph 81 of Schedule B1 of the Insolvency Act 1986 has been made which has led to a finding that the administration appointment was made for an improper purpose and that it should cease. The court has also found that the appointment was in any event invalid, following decisions by Hart J ((Re G-Tech) and Norris HHJ (Re Blights Builders Ltd). The case is being litigated in the TCC Court because of the underlying original litigation and this part of the bankruptcy litigation was itself transferred to the TCC Court.

Mehta v Mehta

This was multi-national litigation being a contributories winding up petition of a company incorporated in British Virgin Islands linked into litigation in India, Hong Kong and Isle of Man. Jane Giret QC obtained a winding up order in a hearing in the BVI. The matter was founded on a major dispute between members of a substantial Indian family.

Atlantic Telecommunications Ltd

This was about a group of companies, incorporated in Scotland and England, which became insolvent. Administrators had been appointed to most of the group companies and there was substantial inter-company debt. Application was made to the court (in England and Scotland) for directions to enable the group of companies to pool the funds realized rather than having to deal with each company separately. This led to a saving of legal and other costs.

Shierson v Vleiland-Boddy [2005] EWCA 974

Cross-Border Insolvency - EU Regulations

Jane Giret QC represented the debtor before the Court of Appeal in this case concerning a change of Centre of Main Interests (“COMI”) for the purposes of the EC Regulation on Insolvency Proceedings. The debtor was a chartered accountant of some 25 years standing. In 2003 he proposed two IVAs, albeit unsuccessfully, in which he accepted that his COMI was in England and Wales. Later in 2003 he made final returns to the Inland Revenue and Customs & Excise and moved to Spain, where he continued to offer accountancy-related services to the expatriate community. Thereafter he returned to England only to see his children. Before the Registrar and on appeal to a Judge of High Court, the petitioning creditor argued that the Court should have particular regard to the location of the debtor’s COMI at the time that the petition debt was incurred (which was admitted to be in England).

Held:The Court found that the debtor had successfully changed his COMI from England to Spain and was not amenable to Main Proceedings in England. Lord Justice Chadwick set out five points by way of guidance to courts considering this issue:

1. COMI is to be tested at the time when the Court considers whether to open insolvency proceedings. This will normally be either the hearing of a petition, or on a prior application for permission to serve out of the jurisdiction.
2. Historical facts which have led to the debtor’s present position may be relevant to the enquiry.
3. COMI should be ascertainable by third parties and regard should be had not only to what the debtor is doing but what he would objectively be perceived to be doing. COMI must also have an element of permanence. The Court will be slow to accept that COMI has been changed by activities which may turn out to be transitory.
4. The debtor is free to choose where he carries on those activities which constitute the ‘administration of his interests’. If he chooses to change the place in which he does so, in a way which is ascertainable by third parties, then the court must give effect to that decision. Choice of COMI is a subjective matter for the debtor, but the question of where he conducts the administration of his interests on a regular basis remains an objective enquiry.
5. Where there are grounds for suspicion that a change of COMI is self-serving, for example to avoid the consequences of insolvency, the Court will need to scrutinise carefully the facts relied upon as evidencing a change. A change must be substantial and not illusory, and it must have the necessary element of permanence.

Comment: The message to those who might consider changing their COMI in order to evade English bankruptcy seems to be this: a change of COMI is possible, but it must be done fully, publicly and permanently. It is doubtful whether the affairs of many business people will permit of a sufficiently complete and permanent uprooting for forum shopping by debtors to become a significant problem.

In the Matter of Doltable Ltd [2006] 1 BCLC 384

Insolvency - Administration

In this important case which clarified the proper purpose of company administrations, Raquel Agnello represented the applicant company (D) seeking an administration order while the respondent company (L) was represented by Jane Giret QC and Jonathan Lopian.

The purchasers (M) connected with D had borrowed money from L, the loan being secured by a fixed charge over land owned by D. M was attempting to sell the land when, because the loan was not repaid as arranged, L appointed a receiver who also entered into negotiations to sell the land. An offer was received that the receiver wanted to accept. D applied for an administration order and at a late stage came up with a higher offer. D argued that a sale of the property for the offer received would be a sale at an undervalue and that an administration order would rescue D as a going concern. L contended that the application was an abuse of the administration process as it was only made to prevent it as a secured creditor from enforcing its security.

The court held that D was unable to pay its debts as they fell due. The agreed facts demonstrated that the prime purpose of D's application was to use the moratorium on enforcing the rights of secured creditors to get a higher sale price. The evidence suggested that the purpose for which the administration order was sought could not be said to be for the rescue of the company as a going concern and the application could not be brought within the statutory purposes of Sch.B1 para.3(i)(a) of the 1986 Act. Thus there was no proper purpose of an administration order under the Insolvency Act 1986 Sch.B1 para.11.

Alternatively, if it was arguable that the application could be brought within the statutory purposes, then the court would exercise its discretion against making the order sought.

The application to appoint an administrator was therefore refused.

National Westminster Bank plc v Bowles [2005] EWHC 182 (QB), [2005] All ER (D) 226 (Feb)

Guarantees - Default Judgments

This was an application to set aside a default judgment against the Defendant as the personal surety for loans extended by the Claimant bank to two companies beneficially owned by the Defendant. The application was opposed on several grounds. One was that the Defendant had waited for more than 15 months before making the set-aside application, a failure to act promptly to which the court is obliged to pay particular attention when considering the application, under CPR 13.3(2).

Jane Giret QC, representing the Defendant established that he had a real prospect of succeeding by reference to the judgment in *Bank of India v Trans Continental Commodity Merchants Ltd. and Jashbai Nagjibhai Patel* [1983] 2 Lloyd's Rep 298 In that case, the Court of Appeal had set out circumstances in which conduct of the creditor would release a surety from his liability under a guarantee.

In this instance, the surety's liability arose under a guarantee of certain of his companies' liability to the Claimant bank. A bank employee had, the Defendant alleged, either inaccurately, or falsely, denied that he had consented to an aircraft (which had been grounded pursuant to undertakings given to the Claimant's parent) returning to the skies on behalf of the principal debtor companies. On the parent bank's application (with evidence from the bank employee), the aircraft was grounded by order of the Court, thereby depriving the debtor companies of revenue which might have discharged their liability to the Claimant.

Christopher Clarke J concluded that it would be appropriate to set aside default judgment on the basis that the Defendant had a tenable case.

He was also prepared, on the facts of the case, to forgive the 15-month delay. For six months after the default judgment was entered, there was a stay on enforcing the judgment. The Defendant maintained that at the time of the application to set aside judgment, on the facts, the judgment was still stayed. The Judge accepted that this issue also was tenable. In any event, in correspondence, the Defendant made clear to the Claimant, and the Claimant was aware, that he intended to make an application.

Merchantbridge & Co Ltd (Previously Known As Safron Advisors (UK) Ltd) v Safron General Partner I, Ltd (2005) CA (Civ Div) (Peter Gibson LJ, Longmore LJ, Scott Baker LJ)

Contract - Summary Judgments

Jane represented the appellant (M), in its successful appeal against an order for summary judgment. The Court of Appeal judgment provides guidelines as to some of the circumstances in which a summary judgment will be overturned.

The parties had entered into an instalment advisory agreement, which was terminated by the respondent (S). The parties discussed a possible settlement. The judge found that during those discussions M had orally promised that it would not pursue any claim that might have arisen out of S's termination of the agreement. He accordingly dismissed M's claim against S.

M argued that the judge had been wrong to do so summarily since the evidence of continuing discussions between the parties had shown that the issue of whether an oral agreement had been reached was at least arguable. S argued that even if the judge was not entitled to find that an oral agreement had been reached, his decision should in any event be upheld since it was clear from the ongoing discussions that an agreement was subsequently reached that M would not bring proceedings.

The Court of Appeal, in upholding the appeal, said that it was unusual for a judge to grant summary judgment on the basis of an alleged oral agreement that was disputed by one of the parties. The judge in the instant case assumed that an oral agreement was reached without saying why he rejected M's evidence, and he did so without any reference to the further discussions between the parties. The judge failed to explain why he found an agreement to have existed. On that basis his order could not stand.

Furthermore, it was not possible for S to seek to support the judge's conclusion by reliance upon a later agreement that had never been pleaded and upon an argument not advanced before the judge. It was not right to seek to support an order for summary judgment by reference to issues that were unpleaded and uncanvassed on the application.

UK Business Watch

A section 459 petition, dispute between shareholders.