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Insolvency Bulletin

A Review of Case Law Spring 2008

Sarah Clarke & Thomas Robinson

Mark Summers Arnold v (1) Steven John Williams (Trustee in Bankruptcy of the Estate of Mark Summers Arnold) (2) Revenue & Customs [2008] EWHC 218 (Ch)

Tax assessments on discharged bankrupt – whether Trustee or debtor has standing to appeal; whether discharge prevents HMRC serving assessments for pre-bankruptcy tax; suitability of Bankruptcy Court vs Tax Commissioners to determine tax appeals.

This case raised interesting questions about the interplay between the insolvency legislation and the procedures for assessment of tax set out in the Taxes Management Act 1970 (“the 1970 Act”). Can HMRC raise assessments of tax against a Trustee in Bankruptcy in respect of a Bankrupt’s tax liability? Does a Trustee have standing to challenge such an assessment, or one against a debtor, and if so, on what grounds?

Mr Arnold was adjudged bankrupt on his own petition on 26 July 2001 and discharged 3 years later. The First Respondent, Mr Williams, was appointed as Mr Arnold’s Trustee after that discharge, with effect from 21 December 2005. On 12 April 2006 HMRC raised assessments in respect of tax years from 1996/7 to 2001/2 inclusive which were issued in the name of “Mr M S Arnold c/o Steven Williams” and served by sending them to Mr Williams’ firm. They were not served on Mr Arnold.

On 22 May 2006 HMRC submitted a Final Proof of Debt to Mr Williams, including the sums set out in the April 2006 Assessments, together with earlier

protective assessments for 1992/3 to 1995/6 and associated charges, penalties and interest.

In November 2006 Mr Williams identified four properties which he alleged were held beneficially for Mr Arnold, and issued proceedings for a declaration that they had vested in him. Only at this stage does Mr Arnold appear to have taken an interest in his bankruptcy, and his accountants sought to appeal HMRC's assessments out of time, relying on the fact that they had not been sent to him and he had only recently become aware of them.

In May 2007 the court ordered that the properties were vested in Mr Williams, such that there was now a surplus in the estate.

HMRC declined to hear Mr Arnold's appeal against the assessments, stating that his Trustee had sole responsibility for determining bankruptcy debts, and for accepting or challenging them. The assessments had been issued to Mr Arnold's Trustee, not Mr Arnold. That left Mr Arnold having to challenge his Trustee's admission of HMRC's proof through the Bankruptcy courts, which he duly did.

The first question for the court was whether it had jurisdiction to hear a challenge to the assessments on which HMRC's Proof was based. HMRC argued that no such jurisdiction existed: a statutory framework had been set down providing for appeals from assessments to be made to the Tax Commissioners and that absent such appeal the assessments were final. The court held that the general approach of the Bankruptcy Court was to leave to the Tax Commissioners any challenges

to these assessments. The court focused however on the fact that the assessments had not been served on Mr Arnold and were therefore not "final" under the 1970 Act. Although HMRC argued that the assessments were rightly served on Mr Arnold's Trustee alone, and that he held the right to appeal, the court found this to be incorrect. The liability to pay was Mr Arnold's, who received the income in question and was the taxpayer. The court found nothing in the 1970 Act which allowed assessments to be raised on either a Trustee or a bankruptcy estate rather than on the bankrupt himself.

Accordingly the court held that the assessments needed to be served on Mr Arnold, which would trigger his right to appeal. The court noted two earlier authorities where rights to appeal in respect of tax assessments had been held to have vested in the trustee following the reasoning in *Heath v Tang* [1993] 1 WLR 1421. In Mr Arnold's case however, the assessments were raised after discharge, so that there was no right to appeal that could have vested in any Trustee. It was thus the position that any assessment on a discharged bankrupt could only be appealed by him, not by his Trustee.

There are clear practical difficulties with this conclusion. Mr Arnold's case was unusual in having a surplus in the estate, such that he wished to prosecute an appeal to the Commissioners. In the more common case where the Bankrupt has no interest in his bankruptcy debts, can the Trustee lodge any appeal? The court held that there was no machinery under the insolvency legislation allowing such an appeal. This leaves the following three situations for Trustees faced with assessments on a bankrupt:

1. **Pre-bankruptcy assessments:** The Trustee will be bound by these and cannot look behind them to see whether the sums are due. Only in cases of fraud, collusion or “glaring miscarriage of justice” will this rule not apply (*Lam v IRC* [2006] STC 893). NB The Trustee will have vested in him any right of appeal that the Bankrupt held, although such appeal is likely to need to be lodged out of time, with appropriate justification for this.
2. **Assessments during bankruptcy:** On becoming aware of them, if the Trustee wishes to appeal he should serve a notice under s.307 IA 1986 (vesting the right of appeal in him as after-acquired property). If he is not aware of them before discharge however (so that rights under s.307 IA no longer apply), the Trustee has no self-standing right of appeal. There is no authority saying that a Trustee cannot look behind an assessment raised during bankruptcy, but in this writer’s view the principles in *Lam v IRC* will be highly persuasive. This leaves what the court accepted to be an unsatisfactory position, but one that did not need to be addressed in Mr Arnold’s case, where he wished to appeal.
3. **Assessments after bankruptcy:** As for 2, save that no possibility of using the s.307 IA machinery arises. The right of appeal is the discharged bankrupt’s alone.

The court finally disposed of an argument by Mr Arnold that no assessment could in fact validly be raised on him post discharge in respect of his alleged pre-discharge liabilities. The court affirmed that discharge does not in fact affect an underlying cause of action, applying *Law Society v Official Receiver & Another* [2007] EWHC 2841 (Ch). What is affected is

a creditor’s right to enforce, and that question of enforcement was left by the court to await assessment of the tax itself.

Secretary of State for Work And Pensions v Balding [2007] EWCA CIV 1327

Release of Bankruptcy Debts on discharge: whether liability to repay overpaid benefits survived discharge where the Secretary of State sought to recover the overpayments by deduction from ongoing benefit payments

In another case dealing with discharge from bankruptcy, the Court of Appeal considered the position of a debtor who had been informed, pre-bankruptcy, that he had been overpaid social security benefits by the Secretary of State for Work and Pensions. This followed a determination by an Adjudication Officer, determining that £8680.45 had been overpaid. Under section 71 of the Social Security Administration Act 1992 the Secretary of State is entitled to recover such overpayments “by deduction from prescribed benefits”, as well as by other methods that include execution issued from the county court.

The debtor was made bankrupt on his own petition on 16 June 1995 and was discharged from bankruptcy three years later. Meanwhile, the Secretary of State had begun to deduct some £7 per week from the debtor’s benefits.

The debtor challenged these deductions, arguing that his liability to make repayment was a bankruptcy debt that had been released by discharge. The Secretary of State argued that the effect of the 1992 Act’s provision allowing him to make deductions from prescribed benefits was that the debtor was in fact

being paid only his net entitlement to benefit under the statutory social security scheme.

The Administrative Court held that as a result of the Adjudication Officer's determination the debtor was under a liability to repay that was "a liability to pay money under an enactment". It was therefore a bankruptcy debt (as per definition at s.382(4) IA), and the debtor had been released from it.

In the Court of Appeal the Secretary of State argued that the determination of the Adjudication Officer was "in a public law context", and did not itself create a liability to pay money. The Secretary of State retained a discretion as to whether to enforce an entitlement to repayment and was under no obligation to recover an amount after such determination (*R (Steele) v Birmingham CC* [2005] EWCA Civ 1824). If the Secretary of State chose to seek repayment by deduction, the liability to repay arose only when that decision was made, and only in respect of the deduction. There was no liability to pay the whole amount of the overpayment.

The Court of Appeal disagreed. The 1992 Act provides different methods for recovering overpayments, but this would be "fatuous" unless the Secretary of State had a pre-existing right to recover, and the debtor was under a corresponding liability to repay. The Adjudication Officer's determination created a liability to repay that was "a liability to pay money under an enactment". Mummery LJ concluded by noting that Parliament of course had power to remedy what he called the "legislative loophole" that prevented recovery of overpayments by deduction post discharge from bankruptcy. We await with interest...

Angela Mary Donaldson v Jeremiah Anthony O'Sullivan [2008] EWHC 387 (Ch)

Block transfer orders: first challenge to court's jurisdiction; interpretation of s. 303 & 363 Insolvency Act 1986

Since the late 1980s or early 1990s the insolvency courts have developed the practice of block transfer orders to appoint a new office holder in cases where Insolvency Practitioners retire, resign, fall ill, or are otherwise unable to continue in office. This is the first case in which a direct challenge has been made to the court's jurisdiction to make these orders, and practitioners will be relieved that the court's jurisdiction has been upheld.

The case is also interesting for the comments on the court's general power to give directions to a Trustee under s.303(2) IA, and the power of general control under s.363 IA (see conclusions 3 & 4 under the heading "Held" below).

The challenge was made by a discharged bankrupt to a block transfer order that, inter alia, appointed a new trustee over her bankruptcy "pursuant to rule 6.132(5) Insolvency Rules 1986" (which provides that "where the court removes the trustee – (c) if the court appoints a new trustee, Rule 6.121 applies"). The debtor argued that:

1. Rule 6.132(5) of the Rules was of no assistance, as it assumed that there was a power of appointment, but did not purport to confer one;
2. In none of the many previous cases where a trustee in bankruptcy had been replaced in a block transfer had any consideration been given to the

limitations imposed by s.297 IA on the power of the court to appoint trustees. The court's power was set out in s.292(1)(c) IA and referred to the power being exercisable "under section 297". Section 297 expressly permits the court to appoint a replacement trustee only in the special cases referred to in section 297(1), (4) and (5). These do not include cases of bankruptcy where the previous trustee has been removed by the court or where he has resigned or retired for one of the reasons set out in Rule 6.126(3) (ill health, ceasing in practice as IP, conflict of interest or other change in personal circumstances). On its face therefore the Act does not allow the court to appoint a replacement trustee in almost all cases that have hitherto led to block transfer orders.

3. Section 303(2) IA does not provide the solution, despite being relied on in previous High Court decisions. It was "artificial and unnecessary" to interpret the liberty given to a trustee to apply for directions as encompassing a power to remove him and appoint a replacement. Where such a removal takes place, s.300 IA fills the gap and results in the Official Receiver being appointed.
4. Section 363(1) IA does not provide the answer either. It is limited by the phrase "subject to the provisions of this Group of Parts" (i.e. the Second Group of Parts covering insolvency of Individuals and Bankruptcy); the power of the court to control bankruptcies is therefore circumscribed by the express powers in the Second Group, which included s.292(1) and s.297.

The court dismissed these arguments, having reviewed in detail the history of block transfer orders and the apparent procedural "stamp of approval" given by the Practice Direction dealing with these orders (the Practice Direction is recited in full in the judgment, and can also be found at [2000] BCC 927).

Held:

1. Section 292(1) is not exhaustive. It does not purport to set out the only circumstances in which the court may appoint a trustee in bankruptcy (compare section 298 IA, with its restrictive wording "the trustee of a bankrupt's estate may be removed from office only by an order of the court or by a general meeting of the bankrupt's creditors"). The debtor could not be right that section 297 sets out the only three situations where a court may appoint a trustee. Section 297 deals only with special, narrowly defined cases. Given how often earlier judgments on the block transfer procedure had referred to section 298 IA, it was unrealistic to suppose that judges had overlooked the apparent limitations in s.297. Accordingly, the general powers of the court under sections 303 & 363 IA were not circumscribed by sections 292 or 297.
2. Insolvency Rule 6.132(5) is not worded so as to confer a power to appoint: it simply assumes that there is power. However it assumes a general power to appoint, which can cover appointment of a trustee under s.303 pursuant to a Block Transfer Order. It does not assume a power that only exists in the circumstances of s.297.

3. Section 303(2) IA gave a power to give directions “in relation to any particular matter arising under the bankruptcy”. This is, on its face, an unfettered power. There is no statement in the Act that directions may only be given in respect of matters covered elsewhere in certain parts of the Act. Section 303 had the heading “General control of trustee by court”, suggesting the broad nature of the powers which the section confers. This is broad enough to give guidance to a trustee, and to give directions for the appointment of successors in block transfer cases.
4. Finally the court considered section 363, which it described as “a sweeping-up provision that emphasises the over-arching power of the court to ensure that bankruptcies are properly and fairly administered”. Although the Debtor focussed on the words “subject to the provisions of this Group of Parts” in s.363(1) IA, these qualified the words that followed (“the court has full power to decide all questions of priorities and all other questions, whether of law or fact, arising in the bankruptcy”). They did not limit the court’s general control of the bankruptcy process, which extended to the appointment of replacements for outgoing trustees.

The Insolvency Practitioners and Insolvency Services Account (Fees) (Amendment) Order 2008

SI Number: 2008/3

This “Order” amends the *Insolvency Practitioners and Insolvency Services Account (Fees) Order 2003 (SI 2003/3363)* (the “principal Order”) and makes provision for the increase in fees paid by recognised professional bodies. Such

fees are paid in connection with the maintenance of their recognition (as per section 391 of the Insolvency Act 1986) and have been increased from £200 to £207 per member.

Under Article 2(2B) of the principal Order payment is required on or before 1 April 2008. By virtue of Article 4 of the Order, where a body has already made a payment under the principal Order (and prior to this Order coming into force), no further payment is required as regards membership at 1 January 2008.

Re Minrealm Ltd [2007] EWHC 3078 (Ch)

A petition pursuant to section 459 of the Companies Act 1985 was issued by the minority directors of Minrealm Ltd (the “Company”). An order by consent was subsequently made whereby the majority directors agreed to pay certain sums into the Company’s bank account. However, as only minor sums were actually paid the minority directors applied to the court for an account to be taken of the sums due to the Company. In the interim period, the majority directors applied for the Company to be wound up in accordance with section 124 of the Insolvency Act 1986 (the “1986 Act”).

Held: On the evidence, although the Company was not balance sheet insolvent it was cash flow insolvent. The Court therefore had jurisdiction to wind up the Company as it was deemed unable to pay its debts under section 123(1)(e) of the 1986 Act. However, if the application by the minority directors within the section 459 proceedings was successful, this would solve the problems regarding cash flow insolvency. In the circumstances, it was appropriate to order an adjournment of the winding-up petition pending determination as regards quantification and

payment of the sums due from the majority directors. Mr Justice Morgan indicated nonetheless that a different approach would have been taken had this had been a creditors' petition.

R(on the Application of Robert Griffin) v Richmond Magistrates' Court and the Department of Business Enterprise and Regulatory Reform

An appeal by Mr Griffin against his convictions under sections 216 and 208 of the Insolvency Act 1986:

Held:

1. The appeal against the conviction under s.216 would be dismissed on the facts of the case.
2. As to the conviction under s.208 (which related to Mr Griffin's failure to provide books and records of an insolvent company of which he was a director to that company's liquidators):
 - a. Once the prosecution had established (to the criminal standard) that a defendant had failed to deliver up to the liquidator of the relevant company all books and papers relating to that company which were in his control and which he is required to deliver up by law, the defendant could still avoid liability by proving (under 208(4)(a)) that he had no intention to defraud. In order for such a defence to succeed, the Defendant had to prove on the balance of probabilities that he had no such intention. In other words, the burden on the defendant in relation to s.208(4)(a) was higher than the merely

evidential burden that would normally apply to a substantive defence to criminal charges.

- b. The evidence in the case indicated that, on the balance of probabilities, Mr Griffin had not had any intent to defraud in connection with the alleged failure to disclose. As such, his conviction under s.208 would be quashed.

Richard Andrew Segal v Nowrag Pasram and Hemwanti Pasram 3 December 2007 LTL 10/12/2007

Having found in favour of the trustee in a claim to set aside a transaction at an undervalue the court was required to give directions for the release of equity in a the bankrupt's share of a property. Robin Knowles QC (sitting as a Deputy High Court Judge) made the following comments on the costs incurred by the trustee under a Conditional Fee Agreement.

The reputation of the administration of insolvent estates would not be helped by trustees regularly agreeing large CFA uplifts in claims to release equity in a bankrupt's home. A respondent spouse might be placed under undue pressure to accede to the trustee's claim in such cases.

The court indicated the need for a CFA and reasonableness of a 80% or 85% uplift (resulting in total costs of £160,000 plus VAT) in this instance should be examined closely in the following context:

- Adverse costs insurances had been purchased for £9,450.

- The Trustee had not asked creditors to fund the litigation
- The creditors were large financial institutions and the largest had a charge over the property
- The claim was not pursued for many years with the presumed acquiescence of creditors
- The legal costs including uplift and bankruptcy costs were more than three times the bankruptcy debts of £65,000.

The trustee was not awarded cost against the respondent spouse but was allowed his costs, to be assessed, as an expense in the bankruptcy.

Re Rusjon Ltd: Andrew Conquest v Patrick McGinnis and Brian McGinnis [2007] EWHC 2943 (Ch)

An investor entered into an agreement to purchase 50% of the shares in a company which was conditional the investor meeting performance targets. The agreement provided that if the targets were not met payments made by the investor would remain the property of the Company. The investor had made payment of £100,000 which was used to partially discharge the Company's overdraft but failed to meet the performance targets. The overdraft was secured by a fixed charge which was realised by liquidators of the Company resulting in a surplus. The court was asked to determine whether the investor was subrogated to the bank's security or otherwise entitled to the surplus funds.

The court held the investor was not entitled to the surplus. Although the investor was prima facie in the position of a surety who has discharged the debt of his

principal he had excluded his right to subrogation in the agreement which provided the payment made by the debtor comprised the property of the Company. It could not have been intended that the payment would give rise to a debt.

(1) David Richard Thorniley (2) Peter John Forsey v (1) Revenue & Customs (2) Harris N.A (Successor by Merger to Harris Trust & Savings Bank) (2008) [2008] EWHC 124 (Ch)

An application for directions as to the availability of prescribed parts of companies' net property to satisfy debts due to a secured creditor who held a floating charge but whose debt would not be satisfied by the sums available to meet floating charge liabilities. Could the floating charge holder take part as an unsecured creditor in the distribution of the prescribed part?

Held: A secured creditor with a fixed or floating charge cannot participate in the prescribed part under section 176A IA 1986 in respect of any shortfall in his security, whether that shortfall arises under a floating charge or under a fixed charge.

This means that in an insolvency, where there is a prescribed part available for distribution, a secured lender with a fixed or floating charge shortfall will be subordinated to the unsecured creditors. HHJ Purle QC in *Re Permacell Finesse Ltd* (30.11.2007), reached the same conclusion with regard to a secured creditor with a floating charge shortfall. Marcia Shekerdeman of 11 Stone Buildings acted for the administrators.

Moorside Investments Ltd v DAG Construction Ltd (2007) Ch D LTL 1/11/2007

An application to restrain presentation of a winding-up petition. Applicant company asserting genuine and substantial cross-claim. Parties entering into a construction contract, partly oral, partly in writing, by which one had agreed to carry out work on the other's site. There were a number of delays in carrying out the work and payment for it was left owing. DAG issued a statutory demand. Moorside contended that as a result of DAG's delay it had incurred an additional financing charge, and that a cross-claim to recover that sum reduced DAG's claim to nil and resulted in a sum due from DAG to Moorside.

Held: The existence of a genuine and substantial cross-claim, just as much as a defence, would ordinarily entitle a company to injunctive relief to prevent advertisement of a winding-up petition and would justify the dismissal of a petition that had in fact been advertised, *Bayoil SA, Re* (1999) 1 WLR 147 applied. That was not a rule of law, but a practice, and although exceptional circumstances will produce a different result, there was nothing in the present case that amounted to a special circumstance.

Collier v P & MJ Wright (Holdings) Ltd [2007] EWCA Civ 1329, [2007] All ER (D) 233 (Dec) Court of Appeal

Three partners were jointly liable for a debt and the creditor, W, accepted an offer from one, C, to pay his one-third share in instalments. C claimed that W agreed not to proceed, or was estopped from proceeding, against C for the other two-thirds when his partners failed to pay and became bankrupt.

Held:

- There was no binding a agreement between C and W as there was no consideration.
- There was a triable issue as to the existence of a promissory estoppel even though there was no evidence as to C's detrimental reliance on W's acceptance of C's offer to pay his share, as long as there was accord between C and W. This followed Lord Denning's judgment in *D&C Builders v Rees* [1966] 2 QB 617.
- The statutory demand against C should therefore be set aside.

Aquachem Ltd v.(1) Delphis Bank Ltd (in receivership)(2) The First City Bank (3) V. Mohadeb Privy Council From Court of Appeal of Mauritius

Delphis Bank ("DB") using a power in a floating charge over the assets of Aquachem ("A") appointed a receiver and manger of A., which applied for an injunction and a claim for damages on the basis that the appointment was invalid.

Held:

- DB was entitled, as matter of Mauritian statutory interpretation, to appoint a receiver as an alternative to crystallising a floating charge into a fixed charge.
- The bank, BCCI, was not obliged to credit A with the face value of bills of exchange accepted by A's debtor when that debtor had not put BCCI into funds.

- DB's choice as receiver of Mr Mohadeb of Price Waterhouse, even though Price Waterhouse were auditors of DB, was legitimate as a matter of statutory interpretation.
- The company cannot sue in tort on the grounds that there has been an invalid appointment – and it did not suffer any loss caused by the appointment.

Laskar v Laskar [2008] All ER (D) 104 (Feb)

This was a claim to determine the parties interest in a local authority property which had been purchased under the right to buy scheme and was registered in the joint names of the Defendant and daughter, the Claimant. After the Claimant moved out the Defendant had applied to purchase the property. Because the Defendant had been a tenant the purchase price was discounted to £50,000, £29,000 less than the market value but she was unable to raise sufficient funds on her own. The Claimant accordingly agreed to buy the property with her, contributing £3,400 to the purchase price. The remaining purchase price raised by of a joint mortgage of £43,000 and monies from the Defendant. The judge at first instance found the Claimant had a 4.8% interest based on her contribution to the deposit. The Claimant appealed

Held: The Claimant had

- (1) There was a need to depart from the presumption of equal shares because:
 - The Claimant and Defendant had kept their financial affairs separate

- They had not purchased the property as a home for them to share but as an investment
- The Defendant had four other children and there was no reason to assume she would give a large gift to the Claimant and not the others.

- (2) The discount under the right to buy scheme should be treated as part of the Defendant's contribution to the purchase price of the property because she was the tenant who was eligible under the right to buy scheme.
- (3) The joint mortgage should be treated as representing a contribution of £21,500 by each party. It would have been disproportionate and inappropriate to order an account.

Haines v Hill & Another [2007] EWCA 1284 [2007] BPIR 1280

An appeal against the finding of HH Judge Pelling QC sitting as a deputy High Court Judge that the transfer of the Bankrupt's beneficial interest in a farm pursuant to a consent order in ancillary relief proceedings was a transaction at an undervalue contrary to s.339 IA 1986.

Held: HHJ Pelling had erred in law in his finding that because a compromise agreement in ancillary relief proceedings could not give rise to a contractual obligation (*Xydhias v Xydhias* [1999] 2 AER 386) and an applicant for ancillary relief had no cause of action (*McMinn v McMinn* [2003] 2 FLR 823), an applicant for ancillary relief could not give consideration by entering into a settlement

agreement that was by definition not binding. Following *Re Pope* [1908] 2 KB 169 an agreement to forbear from matrimonial proceedings was “valuable consideration.”

An order of the court following contested or compromised ancillary relief proceedings quantified the applicant’s spouses interest in terms of money and/or property. In the absence of the usual vitiating factors of fraud, mistake or misrepresentation, a transferee under property transfer order is to be regarded as having given consideration of equal value.

The wife’s appeal was allowed.

Halabi v London Borough of Camden & Anor [2008] ALL ER (D) 213 (Feb)

The applicant sought annulment of a bankruptcy order under s.282(1)(b) IA 1986. Payment was to be made from funds provided by a commercial lender which were held in by her solicitors who had undertaken to hold them in a client account until the bankruptcy order was discharged by the court. The county courts commonly accepted such undertakings but it was the practice of the registrars in the High Court to refuse to annul based upon such undertaking. In light of this divergence of practice the matter was referred to the High Court for a ruling as to whether ‘paid’ within s 282(1)(b) of the Insolvency Act 1986 included the provision of security for a debt, so as to render the practice of the county courts permissible.

Held: The word ‘paid’ in s 282(1)(b) did not encompass the giving of security for a debt. The qualification ‘to the satisfaction of the court’ in s.282(1)(b)

governed the giving of security. The practice of the county court was not within the jurisdiction of the court.

However, applying *Engel v Peri* [2002] All ER (D) 285 (Apr), if the court thought fit to make an order for annulment, it had the power to specify that the order should not take effect until a later date or until conditions were satisfied. Until such date it was an order, albeit its effect was suspended.

HHJ Jarvis QC accordingly ordered bankruptcy the bankruptcy be annulled on condition that the annulment would not take effect until the official receiver had notified the court that the bankruptcy debts had been paid and that security had been provided.

Sarah Clarke & Thomas Robinson

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Sarah Clarke's practice involves commercial and insolvency litigation and advisory work. She has a broad solid base of experience across all areas of business law including contractual disputes, commercial fraud, consumer credit, sale of goods and guarantees. Her experience of corporate and personal insolvency covers all aspects of bankruptcy and winding up petitions, CVAs and IVAs, asset recovery and misfeasance.



Thomas Robinson has a strong commercial/chancery practice with particular emphasis on insolvency, commercial and employment related litigation. Recently he has been involved in reported litigation concerning reservation of title clauses and contesting the use of arrest warrants under the Insolvency Act 1986. His recent six month secondment with a firm in Guernsey has given him first-hand experience of off-shore litigation as well as experience working directly with a wide range of clients to achieve practical and commercial resolutions of disputes.



Tom was graded Outstanding in Advocacy during his Bar Vocational Course and was awarded third place in Lincoln's Inn's Gluckstein Advocacy Prize for 2004. In 2005 he spent a legal term as a Judicial Assistant to the Court of Appeal, Civil Division. From June to December 2006 he was seconded to the Commercial Litigation department of AO Hall Advocates in Guernsey, working on trust and banking litigation, shareholder disputes and the enforcement of restrictive covenants.

Insolvency @ 11Stone Buildings

Jane Giret QC 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, insolvency and chancery: commercial in Chambers & Partners and the Legal 500 directories, where she is noted for her 'pragmatic approach', for being 'a determined fighter' and 'very well respected'.



Tina Kyriakides practises in general commercial and chancery litigation and advisory work, including company law, corporate and personal insolvency, contract, commercial fraud, sale of goods, credit and leasing transactions, banking, guarantees and other securities and partnership law. Tina has acted as an inspector for the DTI (now BERR) to investigate insider dealing. An extremely effective advocate, she also has an excellent reputation for advising on company and commercial matters, both litigious and non-litigious. Tina is recommended as a leading insolvency junior in Legal 500 and Chambers &



Partners 2008, where she is described as being “sensible, realistic, easy to deal with and an effective advocate in court.” Legal 500 (2007) note her for being “tenacious and good on her feet”.

Raquel Agnello deals with all aspects of corporate and personal insolvency including rescue and recovery work. She also practises in general company and commercial litigation including contract, banking, partnership, guarantees and other securities. Raquel also has extensive experience in proceedings brought against directors defending as well as acting for the company or its liquidator. Additionally she deals with public interest petitions and unfair prejudice petitions against companies.



Raquel frequently advises in relation to disciplinary proceedings brought against accountants/auditors and insolvency practitioners and has defended as well as prosecuted in front of various disciplinary panels, including appeal committees. She has developed a practice acting for the Pensions Regulator in the fast growing area of pensions and insolvency and in particular the ‘moral hazard’ provisions. She sits in the High Court part time as a Deputy Registrar in Bankruptcy and also sits in the Companies Court. Such is her reputation she is sometimes referred to as “the queen of IVAs and CVAs.” *Chambers & Partners 2007*

Marcia Shekerdemian specialises in company law and all aspects of personal and corporate insolvency, including administrations, receiverships, voluntary arrangements, shareholders’ disputes, wrongful trading, misfeasance and disqualification of directors. Her practice also includes other areas of commercial litigation such as contractual disputes, partnerships and commercial fraud. Marcia sits in the High Court as a Deputy Registrar in Bankruptcy and Companies Court. She is recommended in the major legal directories as a leader in the fields of company and insolvency where she is noted for “being particularly alive to the needs of clients” and for “consistently providing advice in a way that is straightforward and easy to understand” and in court proves “a real scrapper”. Marcia was short listed for Chambers & Partners Bar Awards: Insolvency Junior of the Year 2005.



Sally Barber is a senior scholar at Kings College Cambridge where she was awarded Hurst Prize for law. She was awarded the Hardwicke Entrance Scholarship and then the Cassel Major scholarship by Lincoln’s Inn. Sally is experienced in a wide range of chancery and commercial litigation with particular emphasis on company and insolvency law. From early in her career she gained much experience in Chancery matters with a property bias, which has subsequently proved invaluable when dealing with property disputes arising in an insolvency context. She advises and acts on all aspects of corporate and personal and



insolvency law including directors disqualifications, misfeasance, transactions at an undervalue, preferences, wrongful trading, disputed administrations, voluntary arrangements, and office-holder fee disputes. She has recently acted in a case concerning limitation periods for preferences and transactions at an undervalue which made new law in establishing a 12 year limitation period for certain claims. Sally also acted for the director/creditors in *Re Cabletel* 2005 BPIR 28, a ground-breaking decision on office holders' remuneration. She is an extremely effective advocate and is particularly good with clients. She is often brought in as a trouble shooter to deal with new ground or to come up with a new angle on a current issue. She regularly gives talks on current insolvency issues to specialist insolvency associations such as R3 and INU and is currently liaising with High Court on proposals for legislative changes to the IVA process. Sally is recommended in Chambers & Partners as a leading junior in insolvency law. In 2007 Sally was appointed as a Deputy Registrar in the Bankruptcy Division.

Adam Deacock is a commercial litigator with particular emphasis on business disputes in the areas of insolvency, property and fraud. He has extensive experience in all aspects of corporate insolvency and associated recovery. Recent cases have included a number of high profile provisional liquidations of companies in the mobile phone microchip and alcohol industries, along with the attendant asset recovery claims.



Birgitta Meyer specialises in company and insolvency law including administrations, corporate and individual voluntary arrangements and liquidations. Birgitta's practice involves shareholder disputes as well as commercial and fraud related litigation concerning business acquisitions. She is recommended in the Legal 500 2007 as a leader in the field of insolvency.



Jonathan Lopian practises in corporate and commercial litigation and advisory work and commercial chancery, specialising in company law, partnership law, corporate and personal insolvency, director disqualification, contract, commercial fraud, asset tracing, trusts, charities and professional negligence. He was appointed as one of the Junior Counsel to the Crown in 1999 and is currently on the Attorney-General's 'B' Panel. Jonathan is recommended in both the Legal 500 (2007) as a leading junior in insolvency and also in Chambers Guide to the Legal Profession in which he is described by clients as "an easy choice - he's committed, diligent and a consummate professional".



Christopher Boardman was first in his year at Bar School and is now a leading junior practising in commercial, company and insolvency law. His commercial practice involves complex business disputes in areas such as franchise and distributorship agreements, electricity and gas projects, lending and security instruments and company



acquisitions. In the field of company law, Chris can boast experience of a wide-range of technical and litigious cases, involving articles of association and shareholder agreements, directors' duties and liabilities, derivative actions and 459 petitions and capital issues, maintenance and reduction. In the field of insolvency law his expertise is widely acknowledged and he is regularly instructed in difficult corporate rescues, liquidations, bankruptcies and fraud and asset recovery cases. Chris is noted in Chambers & Partners and Legal 500 for being "technically excellent and good on his feet" and his entry to a case is described as "akin to the cavalry arriving".

Jamie Riley is a commercial litigator dealing with all types of business litigation and advisory work. His practice is evenly divided between the areas of commercial, commercial chancery and insolvency. He has an established practice in banking, fraud, asset tracing and has developed a strong reputation in the commercial fields of media, broadcasting and sport. A considerable part of his practice is his company and insolvency work where he acts in an advisory and representative role in both domestic and international disputes. His expertise ranges from general commercial issues arising both under and outside the Insolvency and Companies Acts to technical statutory based matters. In particular Jamie is routinely instructed by office-holders, directors and creditors in relation to companies in administration or liquidation. He has built up substantial trial experience as well as regularly appearing in the Interim Applications and Companies Courts. He is recommended in Chambers & Partners 2008 as a leading junior in the field of insolvency.



Alaric Watson practises in a wide range of business litigation and advisory work, including commercial, general contract, insolvency, employment and property. Alaric has a special interest in various aspects of the interrelationship between corporate recovery and employment law, including the transfer of undertakings and the problems facing administrators. He regularly writes for our employment bulletin. Recent cases of notes include *Re Compound Sections Ltd, Day v Haine & Another, Chancery Division, [2007] All ER (D) 298 (Oct)*



Iain Pester's practice covers both general commercial and chancery litigation and advisory work, with a particular focus on civil fraud (including the preservation and recovery of assets, and claims based on tracing), corporate and personal insolvency (including director disqualification proceedings), shareholder and partnership disputes, joint ventures, professional negligence and the conflict of laws. Iain has experience of all aspects of civil fraud, from obtaining interim remedies before proceedings are commenced to the culmination of the proceedings, either by arbitration or at trial. He has been involved in several complex and lengthy cases in this area. He is the author of two chapters in Commercial Litigation: Pre-Emptive Remedies (4th ed, looseleaf) (Sweet & Maxwell), one on provisional liquidators and the other on injunctions in insolvency proceedings, and speaks fluent French, German and Russian. Iain is recommended as a leading junior for fraud: civil in Chambers & Partners 2008, where he is noted for being a "fantastic junior who has skills well beyond his call year."



Martin Ouwehand was a barrister and solicitor in Melbourne and then a solicitor at London firm Gouldens (now Jones Day) before joining Chambers in 2002. He has a broad commercial litigation practice particularly in areas such as the sale of goods, cross border disputes, information technology, construction, professional negligence, partnership and joint venture disputes. He has significant experience in arbitrations. Martin also has a busy practice in all aspects of corporate insolvency, personal insolvency and company disputes. He is the current author of the Recent Case Summaries section of R3's "Recovery Magazine". R3 is the Association of Business Recovery Professionals and the Recovery Magazine is R3's official membership publication.



Reuben Comiskey's practice is a mixture of commercial, property, and insolvency litigation and advisory work. His commercial practice includes fast-track litigation, sales of goods, consumer credit and company disputes. His commercial work also includes employment law, where he regularly appears before employment tribunals throughout the country. His property work focuses mainly on landlord & tenant. His insolvency practice includes both corporate and personal insolvency. Reuben also deals with professional negligence claims relating to the areas in which he practises.



Clive Wolman worked as a financial journalist, for seven years as a Financial Times correspondent, covering primarily the securities and investment banking industry, and for six years as City Editor in charge of the Financial Mail on Sunday winning a British Press Award and the Wincott Financial Journalism award. He also founded and edited the weekly investment banking newspaper Financial News. It is this experience which will be of great assistance to clients as he builds up his practice in commercial and financial services work including insolvency and fraud. At the Inns of Court School of Law Bar Vocational Course in 2002-03, he won two prizes for achieving the top assessments in the commercial law subjects and in civil procedure and evidence. He also won the Bar Council Law Reform Committee essay prize in 2004, sponsored by the Independent newspaper, for his paper on Shareholder Class Actions.



Dawn McCambley's practice covers commercial, company and insolvency litigation and advisory work. She regularly appears in the High Court and County Courts in many areas of business law including contractual disputes, sale of goods and consumer credit claims. Regarding insolvency matters, Dawn has experience of both corporate and personal insolvency and she undertakes work for private individuals and office holders.



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