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Corporate Insolvency Bulletin
Case Law 2008

These case summaries first appeared as the 11 Stone Buildings 'Cases Alerter' section in Corporate Recovery and Insolvency published by Lexis Nexis. The cases cover those published in CRI up until November 2008. The team which contributed the cases is made up of Martin Ouwehand, Reuben Comiskey, Clive Wolman, Sarah Clarke, Thomas Robinson, Dawn McCambley and David Peters.

(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)

Marcia Shekerdeman of 11 Stone Buildings acted for the administrators.

An application by administrators for directions as to the availability of the prescribed parts of companies' net property to satisfy debts due to who held a floating charge holder 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 of the Insolvency Act 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.

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 manager 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 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.

Cornelius v Casson, Ch.D, 14 March 2008

A creditor, P, petitioned for the bankruptcy of a partner, C, in an insolvent three-partner firm of solicitors. P's husband, also a partner, was made bankrupt while C set up an Individual Voluntary Arrangement. A bank loan to the partnership was secured on three properties, two owned by C. After their sale, the bank pressed for the sale also of the third, owned by P and her husband. Instead P paid the outstanding debt to the bank and served a statutory demand on C to recover it.

Held:

Dismissing the appeal from a district judge, that P was entitled to recover from C because the amount included costs relating to the sale of the two properties of more than £25,000 which were incurred post C's IVA. The liability of the partnership to pay those costs did not fall within the terms of the IVA

Chantrey Vellacott v Convergence Group Plc [2008] EWHC 360 (Ch)

Robert Deacon of 11 Stone Buildings acted for liquidators who appeared as interested parties in an application by a company to vary undertakings given by R, who had effective direct control of that company and others.

The undertakings were given by R at the conclusion of a trial against companies under his control, and took the place of freezing orders. Until R satisfied the costs orders against him he said he would not deal with or diminish the value of his assets up to the value of £5½ million. The assets included any asset over which R had direct or indirect power, and thus could include the assets of the company if R could control the way in which they were dealt.

The variations sought would allow funding for legal advice to be provided to the company from other companies under R's control. The company admitted that it was insolvent, but submitted that expenditure on legal fees was *prima facie* reasonable and would be incurred in the ordinary course of business.

Held:

It appeared that the application was intended to benefit R by releasing funds that were almost certainly under his control. They would be used to serve his agenda and

not the company's which were, presumably, the interests of its creditors. There was no explanation as to why a hopelessly insolvent company should need to investigate claims made against it. There must be suspicion that R wanted to thwart the liquidators of the Defendant companies in the original trial, who were claiming against the company, and cause trouble and unnecessary expense to the Claimant in that trial in addition to the cost incurred in dealing with an 'utterly unmeritorious counterclaim'.

Application refused.

Halabi v Camden LBC [2008] EWHC 322 (Ch)

H was made bankrupt in March 2007 for failure to pay local authority rates. She did not realise she had £70,000 of equity in her two properties compared with her bankruptcy debts of only £14,000 or less. She applied for an annulment intending to pay her debts by re-mortgaging the properties. As was a common practice in the county courts, her solicitor undertook to the court to hold the re-mortgage proceeds and use them to repay the debts once the court had granted an annulment order.

Held:

This approach should be rejected as a breach of s. 282 of the Insolvency Act 1986 and Insolvency Rule 6.211. Instead he made a conditional annulment order suspended until all debts and costs specified in the order had been paid.

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

A discharged bankrupt contended that the court did not have jurisdiction to make a 'block transfer' order, substituting the Respondent as trustee in bankruptcy over the Applicant's estate in place of her former trustee, who was retiring from practice as a licensed insolvency practitioner.

Held:

The court had jurisdiction to appoint the Respondent as trustee in bankruptcy over the applicant's estate pursuant to ss 303(2) and 363(1) of the Insolvency Act 1986 ('IA 1986'). In particular:

- The ambit of s 292(1) of IA 1986 is not exhaustive; rather it contains a general statement of the manner and circumstances in which the power is exercisable. As s 297 deals with special cases which do not encompass the filling of a vacancy, it could not be said the court had overlooked s 297.
- Rule 6.132(5) does not confer a power to appoint, it merely assumes there is such a power. The appointment of a trustee in a block transfer order under s 303(2) of the IA 1986 could therefore be covered.
- The scope of s 303(2) is an unfettered power and there is no reason why it should not extend to giving directions for the appointment of a successor where a trustee wishes to or is obliged to relinquish his office.
- Section 363(1) is a 'sweeping up provision' which emphasises the overarching power of the court to ensure bankruptcies are properly and fairly administered.

Paul Hansford v Southampton Magistrates' Court (& Revenue & Customs: Interested Party) [2008] EWHC 67 (Admin)

In an appeal by way of case stated, the High Court had to consider the following questions:

- Whether a receiver appointed by order of the High Court was entitled under s 81(1) of the Criminal Justice Act 1988 ('CJA 1988') to retain sums in respect of his fees and disbursements in the receivership, out of the proceeds of any realisation which had been made towards the satisfaction of a confiscation order.
- Whether s 75A(1) of the CJA 1988 gave the court a discretion as to whether or not interest should be paid on sums unpaid under confiscation orders.

Held:

- Unless High Court approval has already been obtained for a receiver's remuneration or disbursements then, in accordance with s 81(1), the receiver is obliged to pay the gross proceeds of realisations towards the satisfaction of the confiscation order, as soon as they are received. The receiver would subsequently obtain his remuneration and disbursements pursuant to s 81(5) of the CJA 1988.
- The court did not have discretion to decide whether a person was liable to pay interest pursuant to s 75A(1) of the 1CJA 1988.

Simon Cooper v (1) Prg Powerhouse Ltd (In Creditors' Voluntary Liquidation) (2) Martha Thompson (3) Simon James Michaels (4) James Joseph Bannon (Joint Liquidators) [2008] EWHC 498 (Ch)

The Applicant ('SC') sought a declaration that moneys paid to the respondent company ('PRG') before it went into liquidation were held on trust for the purpose of repaying a finance agreement. PRG contended SC should be treated as an unsecured creditor.

Held:

- Whether there was a purpose trust was a question of fact.
- Although SC might have contemplated the monies might have mingled with PRG's assets and there was no express direction that they were to be used for the prescribed purpose, the arrangement implied the monies would not be available to the free disposal of PRG.
- On the facts SC had created a purpose trust.
- Applying principles of equitable tracing the payments were repayable to SC from assets held by the liquidator.

(1) David Hague (2) PriceWaterhouseCoopers v Nan Tai Electronics [2008] UKPC 13

An appeal against an order permitting an unsecured creditor of a company to serve proceedings out of the jurisdiction on the liquidator of a Company alleged to have breached his duties to take control of company assets. The BVI Court of Appeal held

the allegations raised a *prima facie* breach of duty and that in accepting the appointment the liquidator had submitted to the jurisdiction of the BVI court.

Held:

- The action was misconceived and disclosed no cause of action vested in the unsecured creditor.
- The alleged breaches concerned duties owed to the company, not individual creditors. There was no common law duty of care.
- Although complaints about the liquidator's performance of his duties would fall to be litigated in the BVI courts, in the absence of a serious issue to be tried service out of the jurisdiction could not be justified.
- The complaints could be pursued through misfeasance proceedings against the liquidator.

Giles v Rhind [2008] EWCA Civ 118

An appeal by Mrs Rhind against the order of David Richards J permitting Mr Giles to amend his claim (which was brought under s.423 of the Insolvency Act 1986). Mrs Rhind contended that the proposed amendments ought not to be allowed because they were statute barred under the provisions of the Limitation Act 1980.

Held:

- The Appeal would be dismissed.
- The judge's exercise of his discretion to allow the proposed amendments was (on the basis of his legal findings) not open to challenge. The key question was therefore whether he had erred in law in concluding that s.32(2) of the

Limitation Act 1980 (which prevents time running until the fraud, concealment or mistake is discovered by the claimant) applied to a claim brought under s.423 of the Insolvency Act 1986.

- A claim brought by a trustee in bankruptcy under s.423 of the Insolvency Act 1986 did amount to claim of breach of duty for the purposes of s.32(2) of the Limitation Act 1980. In this context, "breach of duty" should carry a wider meaning than a breach of a specific contractual, tortious, equitable and/or fiduciary duty.
- Despite the wider meaning to be attributed to breach of duty in the context of s.32(2), not all legal wrongdoing amount to such a breach of duty. However, the Court of Appeal expressly refused to define the outer limits of the legal wrongdoing which would bring a claim within the scope of s.32(2).

Barlow Clowes International & Ors v Henwood [2008] EWCA Civ 577

On appeal by Barlow Clowes against an order of Mr Justice Evans Lombe declaring that Mr Henwood was not domiciled in the UK as at the date on which a bankruptcy petition was presented against him. Barlow Clowes contended that Mr Henwood's domicile of origin was in England and Wales, and that (as at December 2005) he had not acquired any subsequent domicile in another jurisdiction. He was therefore properly to be treated as being domiciled in England and Wales.

Held:

Because of errors of principle made by the first instance judge, the court was entitled to conduct its own evaluation of the evidence relating to Mr Henwood's domicile. Mr Henwood was unable to demonstrate on the (balance of probabilities) that he had

the requisite intention to reside permanently or indefinitely at properties owned by him in either Mauritius or France. The fact that he did not appear particularly to prefer one of these jurisdictions over the other was relevant to this failure. On the basis of the above failure to establish a 'domicile of choice', Mr Henwood's 'domicile of origin' (which it was accepted was England and Wales) revived and was to be treated as his domicile for the purposes of insolvency jurisdiction.

(1) Jane Bronwen Moriarty (2) Myles Antony Halley (Administrators of BA Peters Plc) (In Administration) v Various Customers of BA Peters Plc (In Administration) (2008) Ch D (Companies Ct) 29/4/2008

This was an application for directions by the administrators of BA Peters plc ('the Company'), which sold boats both on its own account as direct sales, and as brokers by way of brokerage sales. The standard terms relating to the Company's brokerage business provided that it was to hold any deposit in the client account.

From June 2007 until administration on 14 August 2007 the Company's policy was to pay all deposits, for direct or brokerage sales, into its client account. The policy was breached for most direct sales. By 9 August 2007 it was appreciated that deposits from a number of customers had wrongly been paid into the current account ('Current Account Customers'). The Company duly calculated the total of these deposits as £292,805.96 and asked the bank to transfer that amount from its current to client account. The bank made the transfer but then reversed it as the current account would have exceeded its overdraft limit.

In fact, there was a surplus of £32,538.98 on the client account in excess of the amount held for customers whose deposits had been paid into that account, although

there is no evidence that anyone knew of the surplus. The Current Account Customers argued for a proprietary interest in the client account as a result of (i) a transfer of funds from into the client account from unrelated accounts of the Company, and (ii) the unsuccessful attempt to transfer funds from the current account to the client account.

Held:

Since the balance in the client account at all material times exceeded the amount held in respect of brokerage sales and direct sales, tracing was possible and the amounts deposited were held on trust for the depositing customers (*James Roscoe (Bolton) Ltd v Winder* [1915] 1 Ch 62). Current Account Customers had no proprietary claim and were unsecured creditors. On the facts there was no intention by the Company to create a trust in relation to (i) moneys transferred from unrelated accounts, or (ii) the surplus standing to the credit of the client account, which nobody was aware of.

First Independent Factors & Finance Ltd v Ian Josef Mountford [2008] EWHC 835 (Ch)

The claimant company had purchased the debts of Classic Conservatories & Windows Limited and sought to recover those from the defendant, its director (who had previously been director of a company called Classic Roofs Ltd), under s 217 of the Insolvency Act 1986 ('IA 1986'). He argued (1) because the claimant had never traded with Classic Conservatories, ss 216 and 217 did not apply; (2) ss 216 and 217 did not apply because Classic Conservatories was not a phoenix company, and he could rely on IR r 4.230; (3) the court had power under the Companies Act 1985 ('CA 1985') s

727 to relieve him from liability; (4) the businesses of the two companies were different, so the name, Classic Conservatories, would not be a prohibited name.

Held:

F, as assignee of the debt, would stand in the shoes of the assignor and thus had capacity to sue a former director under s 217 of IA 1986. The defendant was not entitled to rely on IR r 4.230 as Classic Conservatories was dormant within the period of 12 months preceding the liquidation of Classic Roofs. The court did not have power under s 727 of the CA 1985 to relieve the defendant against liability imposed by ss 216 and 217 IA 1986. Classic Conservatories would have suggested an association with Classic Roofs. Both companies operated in similar or adjacent fields of commerce, namely the conservatory business. Therefore, it was a prohibited name.

(1) Dadourian Group International Inc (2) Alex Dadourian (3) Haig Dadourian v (1) Paul Simms (2) Selim Rahman (3) Jack Dadourian & Ors [2008] EWHC 723 (Ch)

A freezing injunction had been granted against Mr Simms and he unsuccessfully appealed against this. Following a further unsuccessful application to discharge the injunction, costs were awarded against him. A stay was granted pending Mr Simms obtaining permission to appeal the unsuccessful discharge. Although such permission was granted, a bankruptcy petition was then presented against Mr Simms and a bankruptcy order was made. Mr Simms sought clarification of the extent of the stay, pending the appeal. He also sought a variation of the stay in that he sought a stay without qualification.

Held:

Upon the making of a bankruptcy order, a bankrupt's assets vested in his trustee in bankruptcy from the date of his appointment. It was therefore up to the trustee to decide whether or not to pursue any appeal. As Mr Simms had been adjudicated bankrupt, the costs order could not be enforced against him. Moreover, as he did not have locus standi to pursue the appeal, Mr Simms did not have any right to make the application in any event.

Parmalat Capital Finance Ltd & Ors v (1) Food Holdings Ltd (In Liquidation) (2) Dairy Holdings Ltd (In Liquidation) [2008] UKPC 23

This was an appeal against the making of a winding up order against the Appellant company ('PCF'), which formed part of the Parmalat group.

The respondent companies had been incorporated to raise finance and had issued loan notes. The capital generated was used by the respondents to purchase stock in a Brazilian Company. The stock was then charged to the bank, as trustee for the note holders. 'Put' agreements were entered into between PCF and the respondents, whereupon they could demand that PCF purchase stock at a specific price. These rights were also charged to the bank as security for repayment of the notes.

The Parmalat group subsequently collapsed and provisional liquidators were appointed for the respondents. The respondents presented a winding up petition against PCF based on the debts due under the put agreements and a winding up order was made.

PCF appealed against this on the following grounds: (i) the respondents had assigned the debts to the bank and so were not 'creditors'; (ii) the bank should have been joined;

(iii) allegations of illegality regarding the 'put' agreements meant that there was a bona fide dispute over the debt; and (iv) there was a conflict of interest regarding the appointment of the same liquidators for both PCF and the respondents.

Held:

- The respondents would not be denied the status of 'creditors' simply because they had assigned the debts by way of security to the bank. The legal title and equity of redemption had been retained by the respondents.
- The legal rights of creditors or the company were not affected by a winding up order. As such, there was no need to join an assignee as an equitable assignor would have a sufficient interest.
- Where there was a bona fide dispute over the debt, the court still had a discretion to make a winding up order in any event [*Brinds Ltd v Offshore Oil NL* (1986) 2 BCC 98916 PC (Aus)].
- The appointment of the same liquidators for associated companies was not uncommon in order to avoid the cost of effectively investigating the same transactions twice. The court could deal with any conflicts of interest upon an application by the liquidators if necessary [*Arrows Ltd, Re* (1992) BCC 121 Ch D (Companies Ct): *Maxwell Communications Corp Plc (No1), Re* (1992) BCC 372 Ch D].

Coyne & Hardy v DRC Distribution [2008] EWCA CIV 488

On appeal by Coyne and Hardy ('the Administrators') against the order of His Honour Judge Purle QC requiring them to pay the cost of DRC's application to remove them as administrators of a company ('the Company'). The Administrators argued that the

judge's summary decision to make a costs order against them was unfair, in that it deprived them the opportunity of giving evidence in relation to the appropriateness of such an order.

Held:

The first instance judge had heard detailed submissions from all the parties and had read the evidence. In those circumstances, he had adequate information before him fairly to embark on an assessment of the Administrators' liability for costs. Given the substantial failings in relation to the Administrators' conduct of the administration, the judge was also entitled to conclude that they had failed to act 'expeditiously and with the robustness of purpose that one would have hoped for and which one is entitled to expect'. Although the judge had in some regards been uncharitable to the Administrators, this was not sufficient to undermine his decision as to their liability for costs.

Thomas Joseph Barrett v John Joseph Barrett [2008] EWHC 1061 (Ch)

Thomas Barrett claimed against his brother John for the proceeds of sale of a property held in John's name. John had originally bought the property from Thomas's trustee in bankruptcy but Thomas claimed that John became only the 'paper owner' holding the property on trust for him. Thomas was responsible for all the expenses and payments (including mortgage repayments) relating to it. His case was struck out for illegality as his purpose was to conceal his interest from his trustee.

Held:

On appeal, Thomas argued that he did not have to rely on his unlawful motive to establish his interest; he could just point to his mortgage repayments. But Mr Justice

David Richards said that such payments were not like direct contributions to the purchase price of a property which would have created a resulting trust in his favour – as the payments might for example be in lieu of rent. Thomas had to explain the payments by reference to his agreement with John, which had a tainted motive as its essence, shaping the entire form of the transaction. The appeal was dismissed.

Haine v Day [2008] EWCA Civ 626

Alaric Watson of 11 Stone Buildings appeared for the liquidator in this case.

Appeal from the decision of Sir Donald Ratlee that a protective award made under s.189 of the Trade Union and Labour Relations (Consolidation) Act 1992 ('TULR(C) A 1992') against a company after it had gone into liquidation was not a provable debt under r 13.12 of the Insolvency Rules 1986 ('the 1986 Rules').

Held:

The appeal would be allowed for the following reasons:

- If it were right that a post-liquidation protective award was not a provable debt, then the TULR(C)A 1992 would have failed properly to incorporate into English law the provisions of the EU Directive on which it was based. The court should (if possible) construe the TULR(C)A 1992 (alongside the 1986 Rules) to avoid this conclusion.
- The relevant employees' right to seek (and therefore the Employment Tribunal's discretion to make) a protective award arose as a result of the insolvent company's failure to comply with the consultation obligations set out in the TULR(C)A 1992. As such, the liability to pay the protective award which

was made arose by reason of a pre-liquidation obligation. It was therefore provable under r 13.12(b).

- Although the existence of the relevant liability was dependent on the exercise of a judicial discretion, on the facts of the case it could only rationally have been exercised in favour of making a protective order. This made the case distinguishable from the previous Court of Appeal decisions in *Glenister v Rowe* and *R(Steele) v Birmingham CC*.

Professional Computer Group Ltd [2008] EWHC 1541

A creditor presented a winding-up petition against Professional Computer Group Ltd (the 'Company'). The Company subsequently applied for an administration order (the 'Application') whereupon the creditor served lengthy evidence in opposition. The initial hearing of the Application was adjourned; further witness statements were served by the Company, together with detailed skeletons on behalf of both parties. An administration order was ultimately granted and the parties made the following applications for costs:

- The Company applied for an order that: (a) the costs of the Application be an expense of the administration; and (b) the Creditor be ordered to pay the Company's costs from the date it served its evidence in opposition.
- The creditor applied for an order that its costs be an expense of the administration. It relied on r 2.12(3) of the Insolvency Rules 1986 (the 'Rules'): 'If the court makes an administration order, the costs of the applicant, and of any person whose costs are allowed by the court, are payable as an expense of the administration'.

Held:

When making an order for costs, the court should consider whether it was just to do so in all the circumstances.

- The Application had been made in a satisfactory manner, with the necessary supporting evidence. There was no reason why the Company should not be entitled to its costs as an expense of the administration.
- Had the creditor not opposed the Application, the court would have granted the administration order on the evidence before it. The creditor's opposition to the Application had significantly increased the burden of costs on the Company. That burden would ultimately be borne by the creditors. It was therefore just in all the circumstances that the creditor should pay the Company's costs to the extent that they had been increased by the unsuccessful opposition to the Application.
- By virtue of r 2.12(3) the court had the power to provide for the costs of a creditor who unsuccessfully opposed an administration, to be an expense of the administration. However, it would require something exceptional or out of the ordinary to justify such an order. It would not be just to do so in the present case and thus the creditor's claim for costs was dismissed.

Gold Fields Mining v (1) James Robert Tucker (2) Jeremy Spratt Sub Nom in the Matter of Energy Holdings (No 3) Ltd (In Liquidation) (2008) Ltl 14/8/2008 (Unreported Elsewhere)

By application under s 7(3) of the Insolvency Act 1983 a creditor sought an order that the decision of the supervisors of a CVA to reject its claim as out of time should be

reversed. The CVA provided that claims must be submitted within 45 days of the approval of the CVA. Paragraph 23 of the CVA then provided that late claims would not be considered unless the failure to lodge earlier did not result from the creditor's wilful default or lack of reasonable diligence, or the creditor (a) had not had notice of the creditors meeting and (b) had lodged its claim within 28 days of becoming aware that the meeting had taken place.

The applicant submitted its claim more than 45 days after the meeting, and more than 28 days after learning of the meeting. It relied on the first limb of para 23 (extension of time where no wilful default or lack of reasonable diligence). The supervisors argued that the first limb could not apply to creditors who had not had notice of the meeting. Only the second limb was open to them (28 day extension from date of awareness of meeting).

Held:

The applicant could rely on the first limb. The supervisors' argument required words to be interpolated requiring the exclusion of late claimants from the first limb if they came within the second. But if that interpolation were made it would give rise to a significant difference between the treatment of one class of creditor and the other. Why should those who did have notice of the meeting have a more favourable treatment than those who did not?

Re: Expro International Group Ltd [2008] EWHC 1543

A consortium ('U') including members of EIGL applied for sanction of a scheme of arrangement comprising acquisition of the entire issued share capital of EIGL. The City Panel on Takeovers and Mergers decided H, a third party which had expressed

interest in making a rival bid, should announce an offer or withdrawal under paras 2.5 or 2.8 of the Takeover Code by 20 June. On 13 June U announced a firm offer of £16.15 payable in July. On 20 June H made an offer of £16.25 which would be paid in September. The offer was rejected due to the delay in payment and the greater risk that the deal would not complete. H issued a notice of withdrawal but reserved the right to make a further offer if there was a delay of 14 days or more of the court sanctioning U's scheme.

At the hearing of the application for sanction certain shareholders sought an adjournment in order to give H an opportunity to make a further offer on grounds. It was submitted that the initial rejection by the board was flawed.

Held:

Mr Justice Richards rejected the criticisms of the board's decision. He refused to adjourn the application as this would perpetuate uncertainty to the disadvantage of the shareholders. The scheme approved by shareholders had included provision that there would be no adjournment of the court hearings in the absence of a firm offer from H.

Re: TAG World Services, Re: Club Labourse Travel (30/7/2008)

T, a company which managed a holiday club affording members access to unused timeshare accommodation, was the subject of a public interest winding up petition. A second petition was presented against C on grounds of its association with T.

Held:

A winding up order was made against T for the following reasons:

- T had been involved in dubious sales practices including misrepresenting the nature of membership benefits;
- T's membership contracts breached consumer regulations regarding cancellation rights;
- T had also misrepresented the nature of its business in order to benefit from a VAT refund;
- There was cause for concern in the volume and handling of customer complaints;
- The 'free holidays' offered to those who attended presentation were in reality subject to charges in the form of 'arrangement fees' or were not provided.

In weighing up the balance of public interest it was appropriate to consider what benefits were obtained by members of the club in consideration for the large membership fees. The fact that T had essentially ceased to operate before presentation of the petition was not grounds for dismissing an otherwise well founded petition.

The Petition against C was dismissed. There was no complaint against the manner in which C conducted its business. The fact that it was inextricably tied up with T could not by itself justify a winding up order.

There was insufficient evidence to establish T was insolvent and the fact that the director treated T and associated companies as a single entity for accounting purposes did not add anything to the case for a winding up order.

In Re Beloit Walmsley Ltd [2008] EWHC 1888 (Ch)

Facts:

The company entered into administration on 17 November 1999 and then a Company Voluntary Arrangement on 17 April 2001. The administrators were also the supervisors of the CVA. The company had exposed its employees to asbestos. The Financial Services Compensation Scheme Limited ('FSCS') had been required to meet a number of personal injury claims made by former employees. FSCS took an assignment of these employees' claims against the company.

Some of those with personal injury claims, but whose symptoms had arisen well after the CVA, would not be party to the CVA under s 5 of the Insolvency Act 1986 ('IA 1986') (as it was before the recent amendments) because they would not have been given notice of the meeting approving the CVA.

The administrators applied to court because they wished to exercise a discretion under the CVA to admit any such additional creditors to participate in the CVA so long as they could show their injuries had arisen by 22 November 1999 (the date that a liquidation would have occurred).

FSCS had had to meet the claims of a further category of contingent creditors whose claims were based in tort and did not accrue until after 22 November 1999. They therefore opposed the administrators' application because these claims would be excluded from the proposed distribution and FSCS would be unable to recover all of its loss. Among other things, FSCS sought an order that would make the CVA funds available to these contingent creditors as well as the others.

Held:

FSCS's application was dismissed. The court had no jurisdiction to order the administrators to make a distribution which would contradict the terms of the CVA or to do anything which would lead them to breach the trust created by the CVA.

Comment:

The creditors with purely tortious claims accruing after 22 November 1999 could not be defined as creditors of the CVA. FSCS, however, relied on a term in the CVA that allowed the administrators to take such action as they see fit in order to protect the best interests of those concerned in the CVA 'notwithstanding that such action may differ from the course of action anticipated [in the CVA proposal]'.

However, the judge found that read as a whole this provision could not authorise the administrators to make distributions to those not contemplated by the CVA.

The judge held that the court does not have the power to direct a variation to the terms of a CVA nor does it have jurisdiction to direct a course of action that would involve a breach of the terms. The judge held that, if he was wrong on this point, the court could not in any event authorise what would amount to a breach of trust in respect of the CVA.

This followed from *Re NT Gallagher & Sons Limited* [2002] 1 WLR 2380 which held that where (as here) a CVA provides for monies to be held on trust for CVA creditors then that trust must take effect according to its terms.

Dayman v Aziz [2008] EWHC 2244 (Ch)

Facts:

Ms Dayman (D), had served as a court appointed restraint and management receiver for nearly two years up to August 2006. She sought to charge for her services after the discharge of the receivership order and to meet her fees by taking possession of property owned by the defendant Mr Aziz (A).

The receivership order made no explicit reference to such charges, although it referred to a letter of agreement which in turn referred to D being paid out of the assets brought in during the receivership, subject to court approval. More fundamentally, D argued that CPR r 69.7 cannot displace a long-established rule of the common law that receivers are to be remunerated for their services out of the assets under their control.

CPR r. 69.7 says: 'A receiver may only charge for his services if the court (a) so directs; and (b) specifies the basis on which the receiver is to be remunerated'.

Held:

The judge was persuaded of the force of the latter point by two earlier decisions namely Mr Justice Newman in *Re B* [2006] EWHC 2282 (Admin) and by the analysis of Lord Walker in *Capewell v Customs and Excise Commissioners* [2007] UKHL 2, [2007] 1 WLR 386. The judge dismissed A's attempts to distinguish those cases and also raised (without deciding) the possibility of the court's authorising the receiver to charge for her services even at this late stage.

(1) Magical Marking Ltd (2) Andrew Warden Phillis v Sean Patrick Phillips & 6 ors [2008] EWHC 1640 (Pat)

Facts:

This was an application for leave to continue proceedings against a company in administration, pursuant to para 43 of Sch B1 of the IA 1986.

The claimant alleged that a former director had acquired a copy of the claimant's designs, business documentation and company lists, and used them to establish a rival business. The claim sought orders inter alia restraining the use of the property passed to ESP and an account of profits arising from use of that property.

ESP went into administration some three months before the date fixed for trial. The claimant sought leave to continue proceedings. The administrators refused their consent on the grounds that the claimant had a monetary claim which should be considered at the time any distribution to unsecured creditors was proposed.

Held:

The court applied the principles in *Re Atlantic Computer Systems Plc*, [1992] Ch 505 and focused on the proprietary nature of the claim. This alleged that ESP held property received from the claimant on constructive trust and sought an injunction and account of profits in respect of it. Had the claim been for money only, the authority of *AES Barry Ltd v TXU Europe Energy Trading (In Administration)* [2004] EWHC 1757 (Ch), [2005] 2 BCLC 22 suggests that only in exceptional cases will leave be granted for them to proceed.

However, in this case, it was appropriate that the question of ownership of the property

be determined by a court, and that costs should not be duplicated by the claim proceeding against some defendants but not ESP.

Finally, it was held that allowing the claim to proceed would not significantly impede the objective of the administration. That had been achieved on day one by selling the undertaking and assets to an associated company.

This was not an administration with the purpose of achieving a CVA, or approval of a scheme. The administrators now only had to distribute a fund in their hands. No serious harm could come from resolving the issue at trial, thus enabling the administrators to know where they stood in relation to that fund.

Official Receiver v Gary Lee May [2008] EWHC 1778 (Ch)

Facts:

This was an appeal brought by the Official Receiver against a district judge's refusal to grant a bankruptcy restrictions order ('BRO').

The bankrupt had sold a motorbike which was subject to a hire purchase agreement for £1,250. He knew the motorbike was worth £3,500 at the time and deliberately sold it at an undervalue in order to achieve a quick sale.

He did not seek the permission of the finance company for the sale and did not use any of the proceeds of sale to repay his liability to the finance company. He subsequently declared himself bankrupt. The district judge found the bankrupt was motivated by desperation, not a deliberate intention to defraud anyone. She considered

he was unlikely to repeat this conduct. She concluded she had discretion not to make a BRO and was inclined to exercise it in that instance.

The OR, relying upon the decision of Launcelot Henderson QC in *Randhawa v Official Receiver* [2006] EWHC 2946 (Ch) [2007] 1 WLR 1700, contended the district judge was required to determine whether the bankrupt's conduct was such that a BRO was appropriate and if that was the case the court had no discretion to refuse to make an order.

Held:

Having expressed some doubts about whether *Randhawa* was correctly decided, Christopher Nugee QC concluded that although he was not bound by the ruling he should only depart from it if distinctly satisfied it was wrong. On careful consideration he concluded it was right. He accordingly allowed the appeal.

Upon reconsidering the circumstances of the case he determined that the bankrupt's conduct was such that it was appropriate to make a BRO for a period of two years and six months.

The Oracle (North West) Ktd v Pinnacle Services (UK) Ltd [2008] EWHC 1920

This case concerned an administration application made by the directors of Pinnacle Services (UK) Limited ('the company') and a cross application made by a substantial creditor of the Company (Oracle (Northwest) Ltd or 'Oracle'), again for an administration order.

The company's directors and Oracle each alleged that the other's choice of proposed administrator had been dictated by their respective personal interests in how the administration was to be conducted rather than what was in the best interests of the company's creditors as a whole.

Held:

- That it was not possible to adjudicate upon the allegations of collateral purpose being thrown about between the company's directors and Oracle.
- That, in ruling on an administration application, the court was concerned to provide the best solution in terms of setting up an administrative framework for the benefit of the creditors.
- That, as the majority of the company's creditors favoured Oracles' proposed administrator, it would be most appropriate to appoint him.
- That, as the two proposed administrators had substantially different views as to how to conduct the administration, a joint appointment would not be appropriate.

(1) Josef Syska Acting as the Administrator of Elektrim SA (In Bankruptcy)
(2) Elektrim SA (In Bankruptcy) v (1) Vivendi Universal SA (2) Vivendi Telecom International SA (3) Elektrim Telekomunikacja SP ZO O (4) Carcom Warszawa SP ZO O (2008) [2008] EWHC 2155 (Comm)

Electrim entered into an investment agreement (governed by Polish Law) with Vivendi which contained an arbitration clause. There was a dispute which was referred to arbitration (governed by English Law). After referral but before the award Electrim went into bankruptcy in Poland. By Polish insolvency law, from the date of bankruptcy the

arbitration clause was ineffective. The arbitrators held that they had jurisdiction and made an award in favour of Vivendi. Elektrim applied to set aside this award.

Christopher Clarke J held that the arbitration was a "lawsuit pending" under Art 4(f) and 15 of the EC Regulation on Insolvency Proceedings, so that the effect of Electrim's bankruptcy on the arbitration was governed by English Law. Polish Law governed the investment agreement and rendered the arbitration clause ineffective for all future disputes. However once the dispute had been referred to arbitration it was governed by its own separate agreement. The award would stand.

In the Matter of the Estate of Bertha Hemming (Deceased) Sub Nom Raymond Saul & Co (A Firm) v (1) Jolyon Holden (2) Louise Mary Britten [2008] EWHC 2731 (Ch)

A son was appointed executor of his mother's will, and sole beneficiary of the residue of her estate. Two months after her death he was declared bankrupt. The administration of the estate was not completed until after he had received his automatic discharge. His Trustee in Bankruptcy asked the estate's solicitors pay to her sums in their client account representing part of the residue. They refused, saying that the right to receive the residue did not accrue until the completion of the administration of the deceased's estate, and so it could not be claimed by the Trustee because it had not been acquired until after the discharge of the bankrupt.

Richard Snowden QC sitting as a deputy High Court judge held that the right of a residuary legatee's entitlement to insist on the due administration of the estate included an immediate right to receive assets upon completion of the administration.

This vested in the Trustee. In any event, even if the bankrupt's right was simply to receive the residue if any as and when ascertained, this would fall within the definition of bankruptcy property. The Trustee was entitled to the money.

In the Matter of Abacrombie & Co Limited [2008] EWHC 2520 (Ch)

Facts:

The Secretary of State applied for an order to wind up the Company under section 124A of the Insolvency Act 1986 on the grounds that it is expedient in the public interest and just and equitable to do so. The Company offered insolvency services to its clients which included assisting them to become bankrupt and arranging for the purchase of the client's share of their property by any co-owner. The Company would take its fee from the proceeds which would typically be between 70 and 90% of those proceeds. There was no financial or commercial benefit to the client or his creditors.

Held:

The Company was wound up. The grounds for a winding up order on this basis are not confined to cases where a company has been acting unlawfully but includes activities contrary to a clearly identified public interest and falling short of a minimum standard of commercial morality. One of the purposes of the Company's business was to sell the clients' equity in their properties for the lowest possible price so the proceeds could fund the Company's charges which were excessive and unjustifiable.

Innovate Logistics Ltd (In Administration) v Sunberry Properties Ltd [2008] EWCA Civ 1261 (Court of Appeal)

Facts:

The Company went into administration on the basis of a "pre-pack" sale of its business to YHL. The sale involved YHL entering into the premises as a licensee of the Company and completing the distribution of the goods from those premises. The lessor, Sunberry, applied for permission under paragraph 43(6) of the Schedule B1 to the Insolvency Act 1986 to allow it to bring proceedings to have the licence terminated, as a breach of the lease, so that it could force YHL to enter into negotiations for an assignment to it of the lease.

Held:

The Company's appeal was allowed. The Judge at first instance erred by not carrying out the balancing exercise in *Atlantic Computers*. One of the main purposes of the administration was the collection of book debts and that would be best achieved by YHL staying in possession of the premises and concluding the Company's contracts with customers, many of whom were also debtors. This interest of the creditors outweighed any loss Sunberry might suffer from being deprived of what would otherwise be a favourable bargaining position in negotiations with YHL.

(1) Paul Lewis (2) Gonda Lewis v Metropolitan Property Realizations Ltd [2008] EWHC 2760

Facts:

The Applicants, a former bankrupt (PL) & his wife (GL) sought determination as to whether his interest in their property had reverted to him pursuant to section 283A(2) of the Insolvency Act 1986 (“the Act”) or whether it had been realised under section 283A(3)(a). The Respondents, who had originally been a judgment creditor of PL, maintained that PL’s joint trustees in bankruptcy (the “Joint Trustees”) had successfully realised PL’s interest by assigning it to them. The deed of assignment had provided that upon completion of any sale of the property, 25% of the net proceeds of sale would revert to the Respondents.

Held:

Application dismissed: Where there were co-owners of a property, only the estate’s interest had to be realised under section 283A(3)(a) of the Act, not the underlying property. A trustee who sold the interests of an estate for deferred contingent consideration therefore ‘realised’ the estate for the purpose of section 283A(3)(a), so long as he had assigned the estate’s interest absolutely.

Re OJSC Ank Yugraneft [also known as Millhouse Capital UK Ltd & Roman Abramovich v (1) SIBIR Energy Plc (and others)] [2008] EWHC 2614

Facts:

The Applicants applied for:

- (1) the appointment of a provisional liquidator of a Russian company (Y) to be set aside;
- (2) the court to decline to exercise its insolvency jurisdiction over Y; and
- (3) the dismissal of the petition to wind up Y.

The Applicants contended that there had never been any need for the court to exercise its insolvency jurisdiction in relation to Y; and the requirements for the winding-up of Y as an unregistered company under section 221 of the Insolvency Act 1986 (“the Act”) had not been met.

Y had commenced proceedings in the Commercial Court, claiming to be the victim of a fraud by RA. Y’s parent company had sought a winding up order against it, on the basis that Y was an unregistered company; and had successfully sought the appointment of a provisional liquidator.

The Commercial Court then dismissed the proceedings and declined to give permission to serve RA outside the jurisdiction. Although it was accepted that the Petition should also be dismissed, the court dealt with the Application on the assumption that the Commercial Court proceedings had not been dismissed.

Held:

As Commercial Court proceedings could have been commenced whether or not a liquidator had been appointed in England, the petitioners could not rely on impossibility, or severe difficulty, in launching the Commercial Court proceedings as a ground for ordering a winding-up.

Rather, the issue to be determined was whether or not the chose in action constituted by the Commercial Court claim was an asset which afforded a sufficient connection with England for the purposes of the Act; and whether there was a reasonable possibility of benefit to those applying for the winding-up order.

The existence of an asset within the jurisdiction was not an automatic reason for the court to exercise its winding-up jurisdiction, particularly where the asset was either so small or of such a character that only a tenuous link with the jurisdiction existed. The petitioners had to demonstrate that the making of a winding-up order would be of some benefit to them.

The appointment of a provisional liquidator and then a liquidator who would supervise the Commercial Court action was an advantage that the petitioners could legitimately seek. The views of the Russian liquidator and of the petitioners, who represented a large proportion of the creditors and contributories, were also important.

If the applications to dismiss the Commercial Court proceedings had failed, the court would not have prima facie declined to exercise its winding-up jurisdiction.

(1) Clive Rayden (2) Paul Rayden v (1) Eduardo Ltd (In Members' Voluntary Liquidation) (2) Vincent Tchenguiz (2008) [2008] EWHC 2689 (Comm)

Mr Vincent Tchenguiz (D2) guaranteed the obligations of a company D1 which entered into an agreement to buy the claimants' ('the Cs') 50% shareholding in another company, but failed to do so. The Cs sued D1 and D2 who counterclaimed for damages for breach of warranties. Under the agreement D1 was not entitled to set off any breach

of warranty claim but when D1 went into liquidation the no set-off provisions were disapplied under the Insolvency Rules. However Gloster J, giving summary judgment, held that it was a matter of interpretation of the guarantee as to whether it applied notwithstanding the statutory no set-off provisions. Because D2 had a primary obligation to ensure that D1 complied with its contractual duties, Gloster J found that there was no real prospect that D2's interpretation would prevail.

In the Matter of Courts Plc (In Liquidation) (2008) [2008] EWHC 2339 (Ch)

One of the most important innovations of the Enterprise Act 2002 was that part of the property of a company in liquidation, administration or receivership should be excluded from any floating charge over its assets and distributed to unsecured creditors. However, the office holder can apply to the court to be exempted from this duty under s. 176A(5) of the Insolvency Act 1986, as amended, if the costs of making in this distribution in accordance with s. 176A(2) exceed the benefits. In this case, the joint liquidators asked to exclude not all unsecured creditors, but just the 260 out of a total of 297 who had claims of £28,000 or less, as the likely dividend was only 0.6 pence in the pound. However, Blackburne J said that the statute did not permit a partial or qualified exclusion of property for unsecured creditors. Section 176A(2) had to be applied in its entirety or not at all.

Martin Corbett v NYSIR UK Ltd (2008) [2008] EWHC 2670 (Ch) Ch D (John Behrens) 30/10/2008

MC, a creditor, applied for an administration order against NSYIR.

NSYIR opposed the application because MC's debt was disputed and NSYIR had a cross claim which exceeded the petition debt.

The petition was also opposed by L, a substantial secured creditor of the Company

Held:

Application refused. Although MC had a good arguable case that the debt was due and therefore had standing to made an administration application and could rely upon non payment of its debt as evidence of insolvency. The court had a discretion whether to make an order or not which had to take into account:

- MC's debt was disputed on substantial grounds
- L's opposition. Given the value of its security L was likely to be a substantial unsecured creditor.
- NYSIR's directors were already negotiating and if they were able to continue the substantial costs of administration would be avoided.

There was no compelling reason to make an administration order

Ella v Ella (2008) 19 November 2008 (unreported)

This was an application by a bankrupt for an order that the bankruptcy order against him be annulled. His trustees in bankruptcy applied for security in relation to their costs.

Sir Edward Evans-Lombe held that the petition on which the bankruptcy order was

founded had been presented, not on the basis of a genuine undisputed debt, but in order to apply pressure on the bankrupt in the context of acrimonious divorce proceedings. It was therefore an abuse of process and the bankruptcy order resulting from it ought to be set aside. Further, the trustees ought to have been aware of the abuse of process described above and so would not be entitled to take a charge over the bankrupt's property to secure their costs.

Fagan v Papanicola (2008) Ch D (Judge Raynor QC) 20/11/2008

Iain Pester of 11 Stone Buildings appeared in this case for Mrs Fagan.

At his wife's insistence, due to concerns about their family's financial security B made a declaration of trust transferring his beneficial interest in the matrimonial home to his wife. At the time B had no problem paying his debts, but was an alcoholic and a gambler. His wife threatened to divorce him if he did not transfer his interest to her.

B subsequently ran up significant debts and was made bankrupt. The trustee applied to set aside the declaration of trust under s.339 and 423 IA 1986.

Held:

- The express reference to the grant of a gift in the declaration of trust was not conclusive evidence that the transaction was a gift
- Relief under s.339 refused. The wife's promise not to bring divorce and ancillary relief proceedings was sufficient consideration for the transfer of B's beneficial interest.

- Relief under s.423 was also refused because the Trustee had not satisfied the court that the dominant purpose of the transaction was the statutory purpose of avoiding debt.

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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 and insolvency 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 junior in both company and insolvency in Legal 500 2008 and Chambers & Partners 2009.



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*). Raquel was named Insolvency Barrister of the Year 2008 at the Chambers & Partners Awards.



Marcia Shekerdeman 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, insolvency and commercial litigation where she clients note: her skills combine to make her "almost the perfect junior," and "she's definitely someone you want on your team."

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 Legal 500 as a leading junior for both company and insolvency law. She is also 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. He regularly deals with freezing injunctions search and seizure orders and other urgent injunctions applications in both the Chancery and Queen's Bench divisions. Adam is experienced in all aspects of insolvency including bankruptcy, liquidation, administration, receivership and voluntary arrangements. He gives advice, both litigious and non-litigious, and acts for insolvency practitioners, creditors and debtors. He had special expertise on both sides of misfeasance and fraud actions, and (quite separately) in dealing with the problems of defective administration appointment. Adam is recommended as a leading insolvency barrister in Legal 500 2008.



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 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 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". Cases of note in 2008 include *Monecor (London) Ltd v Ahmed* [2008] BPIR 458, *Tradition (UK) Ltd v Ahmed & Andronikou* [2008] EWHC 2946. Jonathan was also instructed by HM Revenue & Customs in *Re Farepak Food & Gifts Ltd (in administration)* [2007] 2 BCLC 1, [2008] BCC 22 and by the Secretary of State in the British Coal respiratory disease litigation.



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 994 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 “many people’s number-one barrister.” Viewed as “almost faultless,” he impresses as “a bullish advocate who’s superb 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 2009 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 Commercial Chancery, Civil Fraud and Insolvency in Chambers & Partners 2009 and for fraud in Legal 500 2008. 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. Reuben is recommended as a leading insolvency barrister in Legal 500 2008.



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.

Sarah Clarke's practice involves commercial and insolvency litigation and advisory work. She is developing 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 six month secondment with a firm in Guernsey in 2006 has given him 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.



Thomas 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.

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.



David Peters has gained a wide experience of commercial law including contractual disputes, commercial fraud, arbitration, conflict of laws, insolvency and professional negligence. He won the 4 Stone Buildings prize for Civil Litigation in 2005, was awarded a Queen Mother's scholarship by the Middle Temple in 2004 and was elected scholar of Trinity Hall, Cambridge in 2003. He also represented Cambridge University at debating, reaching the 2004 World Debating Championship semi-finals.



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