

All England Reporter/2021/June/Manolete Partners plc v Hayward and Barrett Holdings Ltd and others -
[2021] All ER (D) 08 (Jun)

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Manolete Partners plc v Hayward and Barrett Holdings Ltd and others

[2021] EWHC 1481 (Ch)

Chancery Division (Companies Court)

Judge Briggs

2 June 2021

Practice – Commencement of proceedings – Issue fee

Abstract

The Chancery Division held that, unless the court ordered otherwise, a claim made by way of an insolvency application that ought to have been made under CPR Pt 7 did not invalidate the proceeding. The court could make such order as it thought fit when exercising its discretion under the procedural rules. In the present case, an appropriate condition was to order payment of the prevailing court fee for issuing a Pt 7 claim within seven days of the handing down of the judgment. The condition would put the applicant in the same position as it would have been if it had issued the relevant claims using the appropriate procedure.

Digest

The judgment is available at: [\[2021\] EWHC 1481 \(Ch\)](#)

Background

In August 2018, Blackwater Plant Ltd (Blackwater) entered a creditors' voluntary liquidation. The first respondent company (H&B) entered a creditors' voluntary liquidation on the same day. H&B was the main customer of Blackwater. The third and fourth respondents were de jure directors of H&B. It was alleged that they had been directors of Blackwater: the third respondent was allegedly a de jure director, and the fourth was allegedly a de facto director. The third and fourth respondents were also de jure directors of **Hayward & Barrett Holdings Ltd (Holdings)**. Around the time of the creditors' meeting convened to wind up Blackwater, R and C were appointed as liquidators of Blackwater (the joint liquidators). C was also the liquidator of H&B.

By an agreement of September 2019, the joint liquidators assigned certain transaction avoidance causes of action provided to them by the Insolvency Act ([IA 1986](#)). By the same agreement, acting as agents of Blackwater, the joint liquidators assigned 'all and any claims that [Blackwater] may have...such claims to include...breach of duty at common law, breach of fiduciary duty or statutory duty or other legal or equitable duty, any claim in fraud, whether common law or equitable fraud, conspiracy by unlawful means and/or any claim under the...[Companies Act 2006](#)' (the Blackwater claims).

The Blackwater claims were made against the third and fourth respondents for breaches of duty in their capacity as directors. The applicant was the assignee of the Blackwater claims.

The third and fourth respondents sought an unless order requiring the applicant to pay the issue fee that would have been payable, had the claim been commenced by way of a CPR Pt 7 claim form. As assignee of the Blackwater claims and the transaction avoidance provisions, the applicant issued an application that included transaction avoidance claims against the first and second respondents. The applicant chose to add the third and fourth respondents, who were subject to the Blackwater claims.

The applicant alleged that the third and fourth respondents had breached their duties to Blackwater by allowing or causing preference payments to H&B, the second respondent and **Holdings**, and they had breached their duties when allowing Blackwater to provide an unsecured credit to H&B. The credit advanced resulted in what was said to be an 'irrecoverable debt' of £680,000. The applicant also sought a declaration and account in respect of certain plant material and cars allegedly surrendered by Blackwater to **Holdings**. It was alleged that the plant material had remained at all relevant times beneficially owned by Blackwater. Further, the applicant sought a declaration against the second respondent concerning a sum received from Blackwater.

Issues and decisions

Whether the third and fourth respondents were entitled to an unless order requiring the applicant to pay the issue fee that would have been payable had the claim been commenced by way of a CPR Pt 7 claim form. The respondents contended that the applicant did not fall within any of the categories of person able to make such an application as [IA 1986 s 212\(3\)](#) provided.

The joint liquidators had been able to issue insolvency proceedings using an insolvency application against the third and fourth respondents. As assignee of the transaction avoidance claims, the applicant could bring the proceedings against the third and fourth respondents by way of an insolvency application (see [49], [50] of the judgment).

Section 212 fell within [Pt IV](#) of IA 1986. But for the assignment to the applicant, the joint liquidators could use [IA 1986 s 212](#) to bring the Blackwater claims in their own name, making use of the insolvency application procedure (see [51] of the judgment).

The applicant was not a liquidator, official receiver, contributory or creditor. A distinction was to be drawn between an assignment of claims vested in the joint liquidators and capable of assignment, claims vested in Blackwater and capable of assignment by the joint liquidators and the office of liquidator. The office was not capable of assignment (see [52] of the judgment).

A Pt 7 claim ought to have been made to pursue the assigned Blackwater claims (see [53] of the judgment).

A claim made pursuant to [IA 1986 s 423](#) made by a liquidator or assignee was not an insolvency proceeding. A Pt 7 claim form was required to bring a claim under the section. It was not the case that the Insolvency and Companies Court had an established practice that overrode the Insolvency Rules 2016 (see [54], [55] of the judgment).

Unless the court ordered otherwise, a claim made by way of an insolvency application that ought to have

been made under CPR Pt 7 did not invalidate the proceeding. The court could make such order as it thought fit when exercising its discretion under the procedural rules. The court was unlikely to regularise such proceedings where there was an abuse of process. The court would not assume abuse (see [56], [57] of the judgment).

The court ought to encourage proceedings to be issued using the appropriate procedure. The court could exercise its discretion to promote the use of the correct procedure for the right claim, as per CPR 3.10 (see [58] of the judgment).

In the circumstances of the present case, an appropriate condition was to order payment of the prevailing court fee for issuing a Pt 7 claim within seven days of the handing down of the judgment. The condition would put the applicant in the same position as it would have been if it had issued the Blackwater claims using the appropriate procedure (see [59] of the judgment).

Shilena Hosiery Co Ltd, Re [1979] 2 All ER 6 [1980] Ch 219 applied; *Clasper Group Services Ltd, Re* [1989] BCLC 143 applied; *TSB Bank plc v Katz* (1994) Times, 2 May applied; *Ayala Holdings Ltd (No 2), Re* [1996] 1 BCLC 467 applied; *Eurocruit Europe Ltd (in liq)*; *Goldfarb v Poppleton* [2007] All ER (D) 229 (Jun) [2007] EWHC 1433 (Ch) applied; *Re Taunton Logs Ltd (in administration) Lucas and another (as joint liquidators of Taunton Logs Ltd (in liquidation)) and another v Cruickshanks and others* [2021] All ER (D) 18 (Jan) [2020] EWHC 3480 (Ch) applied.

Per curiam: 'I reach these conclusions with regret. The criticisms of the procedure are well made by Mr Curl. They do not promote a convenient or sensible or economical use of court resource. In modern parlance the result fails to ensure that claims of this nature are dealt with expeditiously, allotting an appropriate share of the court's resources. An office-holder and assignee of claims will be forced to issue claims arising from an insolvency using different procedures, in different lists within the Business and Property Courts, with a risk that without a transfer they will be case managed, at least, by different judges although the claims arise out of the same facts.'

Joseph Curl QC (instructed by EMW Law LLP) for the applicant.

Hugo Groves (instructed by Karam, Missick and Traube LLP) for the respondents.

Toby Frost - Barrister.