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Case No: 2007 of 2020

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
INSOLVENCY AND COMPANIES LIST (CHD)

Manchester Civil Justice Centre
1 Bridge Street West
Manchester M60 JDJ

Date: 28th May 2020

In the Matter of Secure Mortgage Corporation Limited
And in the Matter of the Insolvency Act 1986

Before :

Before His Honour Judge Halliwell sitting as a Judge of the High Court at Manchester

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Between :

(1) Secure Mortgage Corporation Limited
(2) H Commercial Capital Limited

Applicants

- and -

(1) Peter John Harold
(2) Gregory Paul Tierney
(3) Thomas Merlin Bamber

Respondents

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- -

Mark Harper QC (instructed by **Ralli Solicitors LLP**) for the Claimants
David Mohyuddin QC and **Victoria Roberts** (instructed by **Bishop & Co**) for the Defendants

Hearing dates: 12-13th May 2020

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APPROVED JUDGMENT

Covid 19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on Bailii and other websites. The date and time for hand-down is deemed to be 2.00 pm on 28th May 2020.

His Honour Judge Halliwell:

(1) Introduction

1. These proceedings arise from the extra-judicial appointment of Mr Peter Harold ("Mr Harold") as administrator of Secure Mortgage Corporation Limited ("SMC") under a floating charge.

2. SMC seeks to challenge the appointment on the basis that it was not made by the holder of the floating charge and, in any event, the floating charge was not enforceable on the date of the appointment. There is also an issue as to whether the procedural requirements of *Schedule B1* to the *Insolvency Act 1986* have been complied with.

3. It is contended that, by the time of the putative appointment, SMC had granted a second charge to H Commercial Corporation Limited ("HCC") which is thus joined as a co-applicant. SMC and HCC sue Mr Harold himself together with Messrs Gregory Paul Tierney ("Mr Tierney") and Thomas Merlin Bamber ("Mr Bamber") who together appear to have appointed Mr Harold as administrator in their capacity as personal representatives or trustees of the estate of the late Mr Peter Nolan ("Mr Nolan").

4. The proceedings were brought under the *Insolvency Rules 2016*. Following trial on 12th-13th May 2020, this is my judgment on the substantive issues.

(2) Factual Sequence

5. On 12th September 1996, SMC was incorporated. Mr Nicholas Henesy ("Mr Henesy") was sole shareholder and director. SMC was subsequently registered as freehold owner of property ("the Property") encompassing land and buildings at Sherbourne Street, Cheetham Hill, Manchester. Whilst the historical background is obscure, this appears to have been SMC's only substantial asset. By a mortgage debenture dated 12th May 1998 ("the 1998 Charge") between SMC and Lancashire Mortgage Corporation Limited ("LMC"), SMC mortgaged the Property and granted a floating charge over its assets and undertaking. The 1998 Charge was promptly registered by the Registrar of Companies.

6. On 14th September 1999, SMC was struck off the Register of Companies. It was then dissolved by notice dated 21st September 1999. At that point, SMC's title to the Property would have become vested, as *bona vacantia*, in the Crown in Right of the Duchy of Lancaster. However, the registered title remained in SMC's name and this remains the case.

7. There is nothing to suggest that the Land Registrar was ever invited to enter notice of dissolution in the Proprietorship or Charges Register. On 12th June 1998, the 1998 Charge was entered in the Charges Register. LMC was initially registered as proprietor of the charge but it ceased to be registered as such and, on 17th October 2007, Intermedio Financial SA ("Intermedio"), a company incorporated in the Territory of the British Virgin Islands, was registered as proprietor of the charge. On 1st May 2015, Intermedio was itself struck off the list of companies in the British Virgin Islands. The 1998 Charge remains registered in Intermedio's name. It has not been vacated from the Charges Register but, on 7th November 2019, it was marked satisfied at Companies House.

8. On 15th August 2018, Mr Nolan died. No grant of representation has yet been taken out with respect to his estate. However, Messrs Tierney and Bamber contend that they were appointed as Mr Nolan's personal representatives in his last will dated 30th June 2017. Whilst this will has not been admitted to probate, a copy was shown to me at the hearing from which it can be seen that Messrs Tierney and Bamber were named as Mr Nolan's executors, trustees and residuary beneficiaries. They have instructed Messrs Bishop & Co as their solicitors.

9. On 29th June 2019, SMC was restored to the Register of Companies pursuant to an order dated 12th June 2019 ("the 12th June 2019 Order") of the County Court at Central London. SMC was thus deemed to have continued in existence from the time of dissolution and, in the absence of any disposition of its assets as *bona vacantia*, its assets would thus be deemed to have remained vested in SMC. The 12th June 2019 Order was made on the application of one Richard Armstrong, who was recorded as a creditor of the company.

10. Once the 12th June 2019 Order was brought to the attention of Messrs Bishop & Co, they contacted the Land Registry to note their concerns about it on the basis that Mr Nolan and his representatives had been in possession of the Property for some 20 years. It was at least implicit in their representations to the Land Registry that they perceived SMC to have been restored to the Register of Companies as a device to enable Mr Henesy to obtain possession of the Property. On behalf of the Respondents, it is contended that, by letter dated 23rd July 2019, Bishop & Co demanded repayment of the amounts allegedly due under the 1998 Charge. The demand was made on behalf of "the Estate of Mr Peter Nolan" and was addressed to SMC although it is unclear when it was first delivered into the possession of Mr Henesy, as SMC's sole director.

11. Meanwhile, on 17th July 2019, HCC was incorporated and Mr Stephen Henesy was appointed at its sole director. I am advised that Mr Stephen Henesy is Mr Henesy's nephew. Once HCC was incorporated, arrangements were allegedly made for HCC to advance £50,000 to SMC and obtain a charge over the Property as security. On 14th August, SMC and HCC entered into a debenture which was delivered for registration on 23rd August 2019 ("the 2019 Charge").

12. However, on 30th August 2019, Mr Harold was purportedly appointed as administrator of SMC. In the Notice of Appointment, "the Estate of the Late Mr Peter Nolan care of Bishop & Co" was named as "Appointer" rather than Messrs Tierney and Bamber and it was recorded that "the Estate" was itself the holder of a qualifying floating charge, now enforceable. However, the supporting statutory declaration was made by Mr Tierney in his capacity as "a trustee of the Estate of Mr Peter Nolan". In view of the fact that they had instructed Bishop & Co as their solicitors in connection with Mr Nolan's estate, it can reasonably be inferred that Messrs Tierney and Bamber instructed Bishop & Co to make the appointment on their behalf jointly in their capacity as personal representatives although evidence has not been filed to confirm that this is the case. Consistently with this, I shall also infer that the appointment was purportedly made on Messrs Tierney and Bamber's behalf.

13. In his Report to Creditors dated 23rd October 2019, Mr Harold confirmed that he "understood the debt" secured by the 1998 Charge had been "assigned on more than one occasion" so that "the current proprietorship of the debt resides with the estate of Peter Nolan". He quantified this debt in the sum of £2,317,091. However, he did not identify any other debts or liabilities, observing that no evidence had been provided that monies were due under the 2019 Charge. In his Estimated Statement of Affairs as at 30th August 2019, Mr Harold valued the Property at £500,000. After accounting for the Estate debt of £2,317,091, he thus envisaged a deficiency of £1,817,091 before providing for the company's share capital. He was satisfied he could achieve the statutory objective of realising the company's property in order to make a distribution to its secured or preferential creditors under *Paragraph 3(1)(c)* of *Schedule B1* to the *Insolvency Act 1986.*

14. From an early stage, SMC and HCC instructed Ralli Solicitors LLP to act on their behalf. Between October 2019 and January 2020, they repeatedly asked Mr Harold and Bishop & Co for copies of the alleged assignments of the debt so as to show how the benefit of the indebtedness putatively secured by the 1998 Charge had become vested in Mr Nolan's

estate. However, Mr Harold and Bishop & Co successively declined to provide them with the alleged assignments or otherwise explain how LMC's rights under the 1998 Charge had become vested in Mr Nolan's estate.

15. In these circumstances, SMC and HCC issued the present proceedings on the basis that the 1998 Charge was not vested in Mr Nolan's estate and it was no longer enforceable.

(3) Standing

16. At one point in the proceedings, Mr Harold sought to challenge the standing of SMC on the basis that the proceedings have been initiated by Mr Henesy in his capacity as a director without the consent of Mr Harold himself as administrator. However, this begs the very question in issue as to the lawfulness of Mr Harold's own appointment. In any event, following the judgment of Mr Richard Snowden QC (as he was) in *Closegate Hotel Development v McLean [2013] 3237*, it is now well established that, in a case such as this, the company through its directors does, indeed, have standing to bring the proceedings. In these circumstances, Mr Mohyuddin QC wisely chose not to pursue this point in his submissions. I am satisfied that, in the present case, SMC does have standing.

17. There remains an issue as to whether HCC also has standing. However, I have not yet heard submissions on this issue and, to the extent it is material, I shall thus deal with it when determining liability for costs.

(4) Preliminary applications

18. At the commencement of the trial, Messrs Harold, Tierney and Bamber applied, through counsel, for an order adjourning the proceedings pending the outcome of an application they have recently issued, in the County Court at Central London, to set aside the 12th June 2019 Order. After hearing the application, I declined to do so on two grounds.

    18.1. Firstly, at a hearing on 30th April 2020, HHJ Hodge QC had already refused to stay or postpone the present proceedings in anticipation of their application to set aside the 12th June 2019 Order. Although unchallenged, the available note of his judgment is unapproved and I must thus exercise a measure of caution. However, it appears from the note that the Judge's decision was based on his observations that Messrs Tierney and Bamber had elected to appoint Mr Harold as administrator when aware of the 12th June 2019 Order and he could see no good reason why the present hearing should not go ahead. Following the hearing before HHJ Hodge QC, Messrs Tierney and Bamber issued their application to set aside the 12th June 2019 Order.

However, in my judgment, this did not amount to a material change of circumstances to warrant varying the HHJ Hodge's order since the judge can be taken to have entertained the application on the footing that Messrs Tierney and Bamber genuinely intended to apply for an order setting aside the 12th June 2019 Order. There is nothing in the unapproved note of his judgment to suggest the Judge had any doubts about their intentions or, indeed, that this featured in his analysis.

18.2. Secondly, the preliminary application was listed for hearing on the first day of the trial itself and, if successful, the trial would be aborted. However, it had already been vacated and re-listed once before. To do so again would have involved further delay and an un-necessary waste of costs. It would also have been inconsistent with the Overriding Objective of dealing with cases justly and at proportionate cost so as to save expense, ensure expedition and allot to each case an appropriate share of the court's resources while taking account the of need to allot resources to other cases and enforce compliance with court orders. As indicated in my *ex tempore* judgment, these considerations were, in themselves, fatal to the preliminary application.

19. Following my determination of their application for a stay or adjournment, Messrs Harold, Tierney and Bamber applied for relief from sanction to rely on an additional witness statement from their solicitor, Mr Healey of Bishop & Co. By an order dated 20th March 2020, HHJ Pearce had extended time for the parties to file further evidence on condition that they would not be entitled to rely on witness evidence filed outside the new deadlines. The additional witness statement was filed on 1st May 2020, less than two weeks prior to the date fixed for trial and precluded SMC and HCC from filing evidence in response within the three-week period for which HHJ Pearce had allowed. Applying the three-stage test in *Denton v TH White Ltd [2014] 1 WLR 3296*, I concluded that the breach was serious and significant and no satisfactory explanation had been provided for the default. Having taken into consideration the circumstances of the case, including the need for litigation to be conducted efficiently and at proportionate cost and the need for compliance with court orders, I decided it would unfair and unjust to allow the application and refused relief from sanction.

(5) The statutory framework

20. "The holder" of a "qualifying floating charge" is entitled to appoint an administrator of the company under *Paragraph 14(1)* of *Schedule B1* to the *Insolvency Act 1986*.

20.1. The holder is obviously the person in whom the rights to the security are vested at the time of the appointment.

20.2. The concept of a "floating charge" is not statutorily defined. However, it is provided, in *Section 251* of the *Act*, that it means a charge that was a floating charge at the time it was created. In *re Yorkshire Woolcombers Association Ltd [1903] 2 Ch 284 at 295*, Romer LJ classically described a floating charge in the following terms.

> "I certainly think that if a charge has the three characteristics that I am about to mention it is a floating charge. (1) If it is a charge on a class of assets of a company present and future; (2) if that class is one which, in the ordinary course of the business of the company would be changing from time to time; and (3) if you find that by the charge it is contemplated that, until some future step is taken by or on behalf of those interested in the charge, the company may carry on its business in the ordinary way as far as concerns the particular class of assets I am dealing with".

20.3. A floating charge is distinct from a fixed charge in the sense that the chargor is at liberty to carry on the business and, in doing so, to deal with the assets of the business without first obtaining the consent of the charge holder.

20.4. It is a "qualifying floating charge" if created by an instrument which satisfies at least one of the statutory requirements in *Paragraph 14(2).* These include an instrument which expressly provides that *Paragraph 14* applies (*Para 14(2)(a))* or empowers the holder to appoint an administrator (*Para 14(2)(b)*). However, it also includes an instrument which purports to empower the holder to appoint an administrative receiver (*Para 14(2)(c)).* The statutory power to appoint an administrator on this basis was intended to supersede the holder's power to appoint an administrative receiver and thus applies, in cases such as the present, where the instrument creating the charge was executed before the *Insolvency Act 1986* was amended so as to give effect to the new statutory regime under the *Enterprise Act 2002.*

21. The statutory power of the holder to appoint an administrator is exercisable extra-judicially and is thus distinct from the rights of a creditor and, indeed, other classes of applicant to apply to the court for an administration order. However, it is only exercisable subject to specific statutory conditions. The floating charge must be

enforceable (*Para 16*) and the appointment does not take effect until the procedural requirements are satisfied (*Paras 18* and *19*).

(6) The holder of the 1998 Charge

22. It is axiomatic that only the holder can make the relevant appointment.

23. Where the charge holder dies, his rights as such generally form part of his estate and thus vest in his personal representatives. No doubt, this includes his right to appoint an administrator of a company under the provisions of *Schedule B1, Paragraph 14*.

24. Messrs Tierney and Bamber contend that the 1998 Charge is comprised in Mr Nolan's estate and, as his personal representatives, they were thus entitled to appoint Mr Harold as administrator. It is also at least implicit in their case that they made the appointment on this basis. However, their title has been put in issue and it is thus for them to establish their putative rights. In my judgment, they have failed to do so.

    24.1. Firstly, there is no satisfactory evidence that the 1998 Charge might somehow have become comprised in Mr Nolan's estate. Prior to the commencement of proceedings, Bishop & Co repeatedly declined to provide evidence of their clients' title when responding to requests from Ralli Solicitors. In his witness statement dated 19th March 2020, Mr Healey stated that he understood "from paperwork in Mr Nolan's possession at the time of his passing, that as guarantor he organised the purchase of the [1998 Charge] through companies connected to him". However no such "paperwork" was exhibited to his witness statement notwithstanding that, by order dated 26th February 2020, HHJ Hodge QC had directed the Respondents to exhibit any documents establishing their title.

    24.2. The 1998 Charge encompassed a fixed charge over the Property and a floating charge over SMC's assets and undertaking. It was thus registered, at HM Land Registry, in the Charges Register for the Property and it was separately registered by the Registrar of Companies. It certainly appears LMC has disposed of its interest and it can be seen from the Charges Register that the fixed charge became vested in Intermedio on 17th October 2007. Since that time, the fixed charge has remained registered in the name of Intermedio notwithstanding its subsequent dissolution. In the absence of registration, no subsequent disposition of the legal title to the fixed charge can have taken effect in law, see *Section 27(3)* of the *Land Registration Act 2002*. Since Intermedio was incorporated in a foreign jurisdiction, the statutory

provisions in *Section 1012* of the *Companies Act 2006* for its property to be deemed *bona vacantia* did not apply. However, if the charge has become vested in the Crown - whether by escheat or otherwise at common law - there is nothing to suggest that the Crown has done anything to dispose of its interest and it is certainly not suggested that the Crown has ever entered into a transaction with Mr Nolan or Messrs Tierney and Bamber.

24.3. It does not appear to be suggested that the fixed charge over the Property might somehow have been severed from the floating charge over SMC's assets and undertaking. There is no evidence that SMC had assets other than the Property at the time of dissolution and there is no obvious reason why the holder of the 1998 Charge might have sought to assign its rights under the floating charge separately from the fixed charge.

24.4. Secondly, Messrs Tierney and Bamber were unable, before me, to prove their title as personal representatives. On the first day of the hearing, I permitted them to adduce, in evidence, for the first time a will dated 30th June 2017 ("the 2017 Will") in which Mr Nolan was named as testator and had apparently appointed Messrs Tierney and Bamber as his executors. On its face, the 2017 Will appears to have been executed in accordance with the statutory formalities of *Section 9* of the *Wills Act 1837*. However, no grant of representation has been adduced. Indeed, I am advised no grant of representation has been issued.

24.5. An executor derives title from the will itself, not the grant of probate. On the hypothesis that the 2017 Will is, indeed, Mr Nolan's last will, Messrs Tierney and Bamber would thus be entitled to take steps to collect and realise his estate prior to the grant. This includes issuing proceedings and, in my judgment, it would also include appointing an administrator of a company under *IA 1986 Schedule B1 Para 14(1).* However, to prove their title before a court of law and thus their right to make an appointment, they must produce a grant of representation according to well established legal principles. These principles can be seen to pre-date the assimilation of the law of succession in relation to real and personal property under the *Land Transfer Act 1897* and the *Administration of Estates Act 1925* but can now be taken to apply to the whole of the estate devolving on a deceased's personal representatives, *Chetty v Chetty [1916] AC 603 at 608-9, re Crowhurst Park [1974] 1 WLR 583* and *Redwood Music Ltd v Feldman & Co [1979] RPC 1 at 5.* They are

consistent with *Section 11* of the *Revenue Act 1884* which provides that the production of a grant of representation is "necessary to establish the right to recover or receive any part of the personal estate and effects…" of a deceased person and *Section 2(1)* of the *Administration of Estates Act 1925* under which it was provided that *"*all powers, duties, rights, equities, obligations, and liabilities of a personal representative…with respect to chattels real, shall apply and attach to the personal representative and shall have effect with respect to real estate vested in him".

25. Having failed to establish that the 1998 Charge is comprised in Mr Nolan's estate or, indeed, that Mr Nolan's estate has become vested in them in their capacity as personal representatives, Messrs Tierney and Bamber are unable to establish that they have exercised the statutory power of appointment in *Paragraph 14(1)* of *Schedule B* to the *1986 Act.*

(7) Enforceability

26. In the present case, there can be no dispute that, when created, the 1998 Charge comprised a qualifying floating charge within the meaning of *Paragraph 14* of *Schedule B1.* It incorporated legal or equitable charges over the Property and other specific assets, such as book debts and goodwill together, more generally, with a charge "by way of floating security" in respect of "its undertaking and all its property assets and rights whatsoever and wheresoever present and/or future including those for the time being charged by way of specific charge…" Moreover, power was expressly granted to LMC and its successors in title to appoint an administrative receiver.

27. However, *Paragraph 16* of *Schedule B1* expressly provides that an administrator may not be appointed while the floating charge is not enforceable and there remains an issue as to whether this was the case at the time of appointment.

28. In *SAW (SW) 2010 Ltd v Wilson [2018] Ch 213*, the Court of Appeal have provided some guidance about the operation of *Paragraph 16,* albeit in a case heard by two appellate judges only, Arden and Briggs LJJ. In that case, the Judges both concluded that a floating charge was enforceable regardless of whether there were assets against which the floating charge could be enforced. This was sufficient to dispose of the appeal. However, Briggs LJ also observed, at Para 33, that "a floating charge is…enforceable if any condition precedent to enforcement has been satisfied (such as an event of default) and there remains a debt for which the floating charge stands as security". Arden LJ did not

endorse the analysis of Briggs LJ on this issue but she did not say anything inconsistent with it. In any event, the analysis is consistent with established principles and persuasive as a statement of the law. I am satisfied that a floating charge will generally be enforceable if the criteria identified by Briggs LJ are satisfied.

29. There is a dispute between the parties as to whether Messrs Tierney and Bamber are barred by limitation from enforcing the floating charge on the basis that LMC demanded the amount outstanding prior to the dissolution of SMC and whether, in any event, there are monies due to the charge holder. Bishop & Co's putative demand for payment by letter dated 23rd July 2019 is also disputed. In the light of Briggs LJ's observations in *SAW (SW) 2010 Ltd v Wilson (supra),* these matters are capable of furnishing SMC with grounds to challenge the appointment under Paragraph 16. However, the evidence on these issues is incomplete and require further investigation. Following my refusal of the Respondents' application for relief from sanction to rely on Mr Healey's additional witness statement dated 1st May 2020, SMC and HCC elected not to rely, in response, on evidence dealing, amongst other things, with this aspect of the case. Moreover, on 7th November 2019, the 1998 Charge was marked satisfied at Companies House apparently on the application of a company called Together Commercial Finance Limited. However, the circumstances in which this happened are obscure and I am advised there is an outstanding application to rectify the register.

30. It is un-necessary for me to reach any conclusions on this aspect of the case and, in view of the fact that there remain significant unexplained factual issues which have not been addressed in argument, I shall not say anything further about it.

(8) The procedural requirements

31. The procedural requirements are set out in *Paragraph 18* of *Schedule B1* and *Rules 3.16-3.18* of the *Insolvency (England and Wales) Rules 2016. Paragraph 18(1)* requires the person who makes the appointment to file a notice of appointment with such other documents as may be prescribed. The notice of appointment must include a statutory declaration by or on his behalf confirming that he is the holder of the qualifying floating charge, that it was enforceable on the date of the appointment and that it has been made in accordance with *Schedule B1* (*Para 18(2)).* The notice must also identify the administrator and it must be accompanied by a statement from the administrator (*Para 18(3)). Rules 3.16* and *3.17* set out the prescribed contents of the notice of intention to

appoint and the notice of appointment itself and *Rule 3.18* requires three copies of the notice of appointment to be filed at court accompanied *inter alia* by the administrator's consent to act.

32. These procedural requirements must be satisfied in full. It is expressly provided by *Paragraph 19* of *Schedule B1* that the appointment of an administrator under *Paragraph 14* only takes effect when the requirements of *Paragraph 18* are satisfied.

33. In the present case, copies of the notice of appointment were apparently filed on the date of Mr Harold's appointment, 30th August 2019. I have been shown an un-sealed copy of Mr Harold's statement and consent to act dated 29th August 2019. No doubt, a copy of this was filed at the same time

34. However, in my judgment, the notice of appointment does not comply with the requirements of *Paragraph 18*.

    34.1. *Paragraph 18(2)(a)* requires the notice to include a statutory declaration confirming that the *person* who makes the appointment is the holder of a qualifying floating charge. In the present case, the notice was supported by Mr Tierney's statutory declaration. However, it does not identify the *person* who made the appointment nor does it state that this person is the holder of a qualifying charge. Although "the Estate of the Late Mr Peter Nolan" was denoted in the notice as "Appointer" and elsewhere it is stated that "the appointer" is the holder of a qualifying charge, the Estate was not and is not a person. Nor is it to be treated as such. On the hypothesis that the estate has become vested in Messrs Tierney and Bamber in their capacity as the executors of Mr Nolan's last will, they are not named as such.

    34.2. *Rule 3.17(1)(b)* of the *2016 Rules* requires the notice to provide the name and address of the appointer. It does not do so. Mr Tierney has made the statutory declaration but he is not named as the person making the appointment and his address is not provided. There is no reference at all in the notice to Mr Bamber. Although I have not been provided with a copy of the notice of intention to appoint, I anticipate it is defective in the same way.

35. In the hypothetical event that Messrs Tierney and Bamber could show that the 1998 Charge is comprised in Mr Nolan's estate and has become vested in them in their capacity as personal representatives, the appointment of Mr Harold as administrator could not yet

have taken effect owing to non-compliance with the statutory requirements of *Paragraph 18. Paragraph 19* provides, in terms, that no such appointment takes effect until the requirements are satisfied. There is no statutory test of materiality. However, where it is alleged that the right of appointment was vested in a person who has died, it is all the more important, in the absence of a grant of representation, to identify the person or persons who purportedly make the appointment.

(9) Disposal

36. SMC seeks a declaration that the purported appointment of Mr Harold be declared "invalid". For the reasons I have given, I am minded to declare simply that the appointment is void. If I do so, no doubt the appointment will be "invalid" within the meaning of *Paragraph 21(1)* of *Schedule B1* although it by no means follows that I would be minded to make an order providing for Mr Harold to be indemnified against liability under the provisions of *Paragraph 21(2).*

37. However, I shall make directions for the parties to deliver written submissions in relation to the form of the declaration together with all consequential matters, including costs.