



**Neutral Citation Number: [2020] EWHC 1835 (Ch)**

**Case No: CR-2019-004269**

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**INSOLVENCY AND COMPANIES LIST (Ch)**

**IN THE MATTER OF MBI CLIFTON MOOR LIMITED (IN ADMINISTRATION)**  
**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

**Royal Courts of Justice**  
**Remote Hearing**

**Date: 15/07/2020**

**Before :**

**I.C.C. JUDGE JONES**

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**Between :**

**(1) PHILIP FRANCIS DUFFY**  
**(2) SARAH HELEN BELL**  
**(in their capacity as Joint Administrators of MBI Clifton Moor Limited)**

**Applicants**

**-and-**

**(1) MJF PENSION TRUSTEES LIMITED and ROBERT ASHLEY HALL**  
**(as Trustees of the Michael J Field SIPPS)**  
**(2) ROCKBRIDGE LENDING LIMITED and STANLEY LAUFER**  
**(3) THE PURCHASERS DESCRIBED IN SCHEDULE 1**

**Respondents**

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**Mr Ian Tucker** (instructed by **Addleshaw Goddard LLP**) for the **Applicants**  
**Mr Robert Amey** (instructed by **Schofield Sweeney LLP**) for the **Respondents**

Hearing dates: 9 July 2020  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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I.C.C. JUDGE JONES

## **I.C.C. Judge Jones:**

### **Introduction**

1. This is another administration resulting from a company, in this case MBI Clifton Moor Limited (“the Company”), being used to raise funds from investors to build and/or renovate property with the investors being or to be granted leases of individual rooms within the property. The investors anticipate an income return from “rent” to be received by them through their grant of rights of occupation to the Company (or an associated operating company) of their respective room(s). In this case the property (“the Property”) is a nursing home. In other cases, it may be, for example, a hotel.
2. In some of these investment cases, the grant of a lease will mean the investor has an interest in the land. In this case no leases were granted but the Respondent investors entered contracts of two different types which resulted in them paying deposits for the grant of a lease of a specific room. It is not in dispute before me that the payment created purchasers’ liens to the extent of the respective deposit paid, interest and costs. Therefore, those investors are to that extent secured creditors holding equitable charges (“the Investors’ Charges”) (see *Eason and another v Wong* [2017] EWHC 209 (Ch)).
3. Sadly, however, this is another case where investors have been left “high and dry”. The Company received investments totalling c.£3,548,027. It appears that most of the funds were loaned to other companies which, like the Company, were owned and controlled by Gavin Woodhouse and Robin Forster. The further problem for the investors is that although they have equitable charges, there is a prior charge to secure lending for the purchase of the Property. The net proceeds of its intended sale will be insufficient even to redeem that security. It is another reminder of the need for such investors to ensure they have security of commercial value and that their security is registered at Her Majesty’s Land Registry when granted.
4. However, I am not concerned with issues of fault at this hearing but with an application by the administrators under *paragraph 71 of Schedule B1 of the Insolvency Act 1986* to sell the Property as if it is not subject to security.

### **The Purchase**

5. The Property consists of two registered titles, one freehold and one leasehold. Contracts for its purchase were exchanged on 24 April 2014 and completion took place on 16 May 2014. The administrators’ investigations have led them to be satisfied that only the money of the Respondents to this application was used to purchase the Property. That has not given rise to any issue before me.
6. The £429,000 purchase price was raised in part from monies lent by MJF Pension Trustees Limited and Robert Ashley Hall (as Trustees of the Michael J Field SIPPS) (“the Trustees”). Their £200,000 loan is secured by an all monies charge dated 16 May 2014, which was satisfied on 24 March 2015, with a further legal charge being entered into in replacement the same day “(the Charge)”. The Charge was registered against both titles to the Property on 31 March 2015 and remains registered. The

administrators accept the loan as an arm's length commercial transaction. There is no suggestion by the administrators that the Trustees or the beneficiaries of the pension funds were/are connected with the Company, its directors or shareholders.

### **The Investments**

7. By the time the Property was purchased on 16 May 2014, 10 people had already entered investment contracts with the Company in respect of 14 different rooms. As at the date the Charge was registered, 28 investors had invested in the Company, but no "UN1s" had been registered at H.M. Land Registry under *ss.32 and 33 Land Registration Act 2002*. By the time the Company entered administration 52 investors had invested in a total of 75 rooms. Unilateral notices were subsequently registered by various investors in respect of one or both registered titles but none before the Charge was registered.

### **A Further Security**

8. On 21 December 2018, the Company granted a charge over the Property to Rockbridge Lending Limited and Stanley Laufer by way of a legal charge and debenture (the "**Rockbridge Charge**"), each of which were registered at Companies House on 4 January 2019. However, it does not appear to the administrators that any money is due and owing to Rockbridge Lending Limited or Stanley Laufer from the Company.

### **Priority**

9. The Administrators' position is that the Charge has priority over the other secured interests having been registered first. Plainly that is correct as a matter of law, applying *sections 28 and 29 of the Land Registration Act 2002* and assuming there are no overriding interests to be considered, if the Charge and its registration is valid. The liabilities secured by the Charge will not be paid in full. Therefore, in practice the Trustees are the only persons interested in the sale and its outcome.

### ***Paragraph 71 of Schedule B1***

10. The administrators apply under *paragraph 71 of Schedule B1* for an order permitting the sale of land which is subject to a security (other than a floating charge) as if it were not subject to the security. The Property has been marketed by Sanderson Weatherall with a guide price of £250,000. Strong interest has been generated with 10 serious enquiries and 7 offers received. Sanderson Weatherall has recommended that an unconditional cash offer be accepted. The purchaser proposes to instruct solicitors '*upon acceptance of their offer and complete swiftly after a clean title can be produced*'.

11. The question arising from *paragraph 71(2)(b)* is whether “*the court thinks that disposal of the property would be likely to promote the purpose of administration in respect of the company*”. It is only then that the court can make the order sought.
12. I can see no argument for any other conclusion than that the sale will promote the purpose. It will result in a distribution to a secured creditor. The administrators have decided that this is the only purpose which can be achieved. That is a matter for them to decide in the exercise of their statutory functions, there being no challenge to that decision. They have decided that the offer should be accepted. That too is a matter for them in the absence of challenge. I would reach the same conclusion if other or all the secured creditors would have received a distribution from the sale.
13. I also note that the administrators’ conclusion that the sale will only lead to part payment of the Charge and that it has priority over the other securities, means they could consent to the Trustees enforcing the Charge under *paragraph 43(1)(a) of Schedule B1 of the Insolvency Act 1986*. They have decided not to do so but I refer to this possibility to emphasise that in this case the only Respondents who have a real commercial interest in the sale are the Trustees. They raise no objection to the application.
14. *Paragraph 71 of Schedule B1* also provides that “*An order will be subject to the condition that there be applied towards discharging the sums secured by the security— (a) the net proceeds of disposal of the property, and (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the property at market value.*”
15. In this case sub-paragraph (a) but not (b) will apply. The evidence before me is that the market has been tested, expert advice has been obtained and the sum offered is the market value.

### **Decision**

16. I am satisfied that the court should exercise the discretion to make an order to enable the administrators to dispose of the Property as if it is not subject to security.
17. In reaching that decision I have not had to address the question of priority between individual investors or whether the Rockbridge Charge in fact secures any debt owed by the Company. It is sufficient that the Charge has priority under the provisions of the *Land Registration Act 2002* and, unfortunately, that the net proceeds of sale will be insufficient to pay the debt secured. There is no challenge to the Charge.
18. That leaves the costs of the sale. *Paragraph 71(3)(a) of Schedule B1* provides that an order made under *paragraph 71* is subject to the condition that “*the net proceeds of disposal of the property*” will be used to discharge the security. Therefore, all proper costs, charges and expenses reasonably incurred in the preservation and realisation of the Property should be paid first (see Registrar Simmons in *Townsend v Biscoe* [2010] WL 3166608).

19. The Trustees are seeking to reach agreement on the appropriate sum and propose that the order provide for the application to be adjourned to a further hearing, after completion of the sale, with a time estimate of 2 hours. However, there may be no issue for the court and I consider it right, applying the overriding objective, to adjourn the issue of quantum with permission to restore in the absence of agreement. That will mean the parties will have narrowed down any issues and the directions and time estimate can be specific. It will be for the administrators to decide how much to distribute in the meantime. It is for them to decide whether, for example, there is any risk of challenge to distribution.

Order Accordingly