



Neutral Citation Number: [2022] EWHC 2132 (Ch)

Case No: PT-2020-000698
PT-2021-000761

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (ChD)

IN THE MATTER OF THE TRUSTEE ACT 1925

The Royal Courts of Justice
7 Rolls Buildings
Fetter Lane
London, EC4A 1NL
Date: 12 August 2022

Before :

DEPUTY MASTER RAEBURN

Between :

MARGARITA HAMILTON

Claimant

- and -

HER MAJESTY'S ATTORNEY-GENERAL

First Defendant

- and -

**ED THOMAS
MATTHEW CARTER**

(joint trustees in bankruptcy of Roderic Alexander Innes Hamilton)

Second and Third Defendants

And between:

WALTON PROPERTIES LIMITED

Claimant

- and-

HER MAJESTY'S ATTORNEY-GENERAL

Defendant

**Edward Francis (instructed by Blake Morgan LLP) for the Claimant in the first action
Stefan Ramel and Nicholas Evans (instructed by Freeths LLP) for the Second and
Third Defendants in the first action and the Claimant in the second action
Her Majesty's Attorney-General did not appear and was not represented**

Hearing date: 15 June 2022

APPROVED JUDGMENT

This judgment was handed down remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 12pm on 12 August 2022.

Deputy Master Raeburn:

Introduction

1. In these two actions, the Claimant in PT-2020-000698 ("**MH**") and the Claimant in PT-2021-000761 ("**WPL**") seek competing vesting orders in their favour pursuant to section 44(ii)(c) of the Trustee Act 1925 in respect of the property known as Walton Castle located in Somerset, England ("**Walton Castle**"). WPL's primary case is that it is the legal owner of Walton Castle by reason of it having automatically revested in it. Its claim for a vesting order under the Trustee Act 1925 and pursuant to section 181 of the Law of Property Act 1925 is its alternative case.
2. MH is an individual who occupies and carries on a wedding and events business from Walton Castle through a limited company, Walton Castle Events Ltd ("**WCEL**").
3. WPL is a Guernsey registered company wholly owned by Ministros Properties Limited ("**MPL**"), another Guernsey registered company which also owns Mercantil Ministros MM SA ("**MMSA**"), a Costa Rican registered company.

4. MPL is wholly owned by Mr. Roderic Alexander Innes Hamilton (“**RH**”). A bankruptcy order was made against RH on 23 October 2019, and Mr. Ed Thomas and Mr. Matthew Carter (each of Mazars LLP) are RH's joint trustees in bankruptcy (the "**Trustees**"). Through RH's shareholding in MPL, the Trustees effectively control WPL.
5. At all material times prior to its dissolution, WPL held the legal title to Walton Castle. The present claims arise as a result of the dissolution of WPL, together with its parent company, MPL, on 12 May 2020.
6. MH issued the first claim for an order vesting legal title in Walton Castle in her name on 10 September 2020. It is said that this claim was brought in a bid to safeguard the property and the business conducted therefrom. The Trustees oppose the claim on the broad basis that that MH is unsuitable to act as trustee and / or on the basis that such an order may jeopardise the Trustees’ interest (as ultimate shareholder of WPL) in the property. The Trustees also contend that the effect of WPL's restoration was that legal title to Walton Castle automatically reverted in WPL, rendering MH's claim redundant. Under the second claim, WPL seeks a vesting order in its own right.

The Relevant Factual Background

7. For the sake of concision, I briefly summarise the material factual background as follows:
8. Walton Castle was acquired in the name of RH in 1984 and subsequently transferred to MH's sole name on 23 September 1988. MH established Walton Castle as a venue for weddings and corporate events in or around 2006.

9. On 29 August 2013, MH completed on the sale of Walton Castle to WPL for the sum of £1.5m and WPL was duly registered as the proprietor of Walton Castle. WPL partially funded the purchase of Walton Castle by a mortgage loan which was subsequently re-financed by and subject to a first legal charge in favour of Folk2Folk Ltd (“F2F”).
10. Under the terms of a Tomlin Order made on 17 July 2017, Walton Castle was held by WPL on trust of land as to a 61.06% share for MMSA.
11. On 12 May 2020, WPL and MPL were struck off the Guernsey register of companies and dissolved.
12. MH issued her claim seeking a vesting order on 10 September 2020 and at the first hearing of the claim on 15 February 2021, the Trustees successfully applied to be joined as defendants to the first claim in order to oppose the vesting order sought by MH.
13. WPL and MPL were restored to the Guernsey register on 7 May 2021 and WPL issued the second claim on 25 August 2021.

The Claimant's application for permission to rely on an additional witness statement

14. At the hearing before me, Counsel for MH sought to rely on the fifth witness statement of Ms. Margarita Hamilton dated 8 June 2022 which was filed late. Counsel for MH submits that the statement deals with two discrete points, namely: (i) details of a mortgage offer which has been recently received by MH which is relevant to the Court's exercise of its discretion with respect to the vesting order; and (ii) information relating to the financial position of WPL as it is known to her.

15. In oral submissions, in light of issues raised by Counsel for the Trustees and WPL, Counsel for MH proposed not to rely on elements of MH's statement which contended that WPL is insolvent (on the basis that this is not a question for the Court to determine in this claim).
16. Counsel for the Trustees and WPL resisted that approach and suggested that certain paragraphs of the witness statement be adduced which referred to point (i) only with respect to details of a mortgage offer.
17. I granted permission to enable MH to admit the witness statement as evidence in these proceedings and said that I would provide reasons in this judgment. My reasons are as follows:
 - i) The mortgage offer was only recently obtained (on 27 May 2022) and could not have therefore been included in previous evidence. The existence or otherwise of appropriate financing appears, on its face, central to MH's case in seeking to persuade the Court to exercise its discretion to make a vesting order in her favour;
 - ii) The prejudice to the other parties was minimal; the statement is short (approximately 7 pages in total) and would not have resulted in a material increase in legal costs being incurred in its evaluation prior to, or consideration at the hearing;
 - iii) Whilst the scheme of CPR Part 8 requires the entirety of written evidence relied upon by the parties to be filed at an early stage in the proceedings, the Court has the power to grant permission for further evidence to be relied upon (CPR 8.6(1)(b)) in accordance with the overriding objective. MH filed and

served the fifth witness statement on 5 June 2022; the Trustees, WPL and their legal advisors have therefore had an opportunity to review and analyse its contents in order to make appropriate submissions (albeit more limited time than if CPR 8 had been fully complied with).

- iv) Referring to the principles in *Denton* by analogy, in my judgment, the breach is not serious, the explanation given by MH that the evidence contained in the statement has only recently come to light is a reasonable one and all the circumstances of the case and the interests of justice make it appropriate to grant permission.
- v) Counsel for the Trustees suggested approach to fillet the witness statement such that certain paragraphs could be relied upon, whilst others not, is not appropriate in this case. The Court will not entertain such an exercise where it would be overly burdensome to the parties and disproportionate to its end. In the present circumstances, the Court can efficiently and properly balance and adduce such weight to elements of the evidence as it sees fit, without the need to fillet certain paragraphs.

The Evidence

18. The claims are supported by the following evidence:

- i) the first witness statement of Margarita Hamilton dated 2 September 2020 in which MH sets out the background and basis of the application, including evidence stating that a sum of some £940,000 appeared outstanding on the charges register in relation to the loan facility granted by F2F to WPL at that time;

- ii) the first witness statement of Ed Thomas dated 4 February 2021 which includes, *inter alia*, the Trustees' position on the claims and concerns raised as to MH's conduct;
- iii) The second witness statement of Margarita Hamilton dated 11 February 2021 which principally states MH's evidence as to the loan facility granted by F2F, that she had arranged certain repayments of the loan to be made by WCEL (as the company which operates the business out of Walton Castle) and that the reason she has issued the proceedings is because various lenders and brokers have confirmed that if Walton Castle was vested in her name that she would be able to raise funds for refinancing thereby preventing enforcement by F2F;
- iv) the second witness statement of Ed Thomas dated 12 March 2021 which reiterates the Trustees position that it is their duty to protect the value of WPL, MMSA and WCEL since the assets of those companies form part of RH's bankruptcy estate via the shareholding structure;
- v) the third witness statement of Margarita Hamilton dated 12 March 2021;
- vi) the fourth witness statement of Ed Thomas dated 1 April 2021;
- vii) the fourth witness statement of Margarita Hamilton dated 20 April 2021;
- viii) the first witness statement of David Marsden dated 25 August 2021; and
- ix) as referred above, the fifth witness statement of Margarita Hamilton dated 8 June 2022.

The Issues

19. The parties did not agree on the precise articulation of the issues for determination by this Court but in substance, the following issues arose on the respective parties' cases, which I shall decide in turn.

Issue 1: What is the effect of the dissolution and subsequent restoration of a foreign registered company on the devolution of real property situate in England held on trust of land?

20. MH's case is that there is no automatic reversion of the legal estate in Walton Castle in WPL upon its restoration. Counsel for MH submits that where freehold property in England (i.e. Walton Castle) is held on trust of land by a foreign registered company (WPL) for itself and others as beneficiaries, the effect of dissolution of WPL is that:
- i) the legal estate does not pass by escheat to the Crown, but instead vests in the Crown, subject to all existing interests on which it was held; and
 - ii) WPL's beneficial interest will vest in the Crown as *bona vacantia*.
21. Counsel for MH relies upon the dictum in In re Strathblaine Estates Ltd [1948] Ch 228 per Jenkins J at p. 231; and UBS Global Asset Management UK Ltd v Crown Estate Commissioners [2011] EWHC 3368 (Ch) at [8] – [10], [18] as supporting this overall proposition (to which I refer and discuss below).
22. It is submitted that more generally, the applicable law governing the devolution of real property situate in England is governed by the *lex situs*, i.e. English common law and not the place of incorporation of a company. It is said that the effect of restoration to the register of a foreign registered company in relation to property located in England formerly vested in it by way of trust in land is likewise governed by the *lex situs*, i.e. English common law. There is therefore no automatic reversion in WPL

upon its restoration in relation to property situate in England, because (unlike under section 1032(1) of the Companies Act 2006 in respect of companies registered under that Act) there is no equivalent doctrine at common law which operates to re-vest the English property of a foreign registered company; per Master Clark in Lizzium Ltd v Crown Estate Commissioners [2021] EWHC 941 (Ch) at [39] - [40].

23. WPL and the Trustees' case is that the legal estate in Walton Castle automatically re-vests in WPL upon being restored to the Guernsey register. It is submitted that the legal estate in Walton Castle did in fact pass by escheat to the Crown. It is said that the freehold determined upon WPL's dissolution, the property was without freeholder and therefore vested in the Crown by escheat.
24. It is submitted that there are therefore two potential systems of law that could apply in the present circumstances to determine devolution; English property law or alternatively, Guernsey company law. WPL and the Trustees rely upon the propositions summarised in *Dicey, Morris & Collins on the Conflict of Laws, 15th Ed.* at 30-58, which state:

"Where a company incorporated outside the United Kingdom has been dissolved, its English assets vest in the Crown as bona vacantia. In such a case the requirement that there must be assets upon which the order can operate, is met by treating the Crown's title as a defeasible one which is defeated by the making of the order, whereupon the property re-vests in the revived corporation."

25. Counsel for WPL and the Trustees also submit that the effect of WPL's restoration means that there is no requirement for a vesting order:

- i)** first, on the basis that at all material times, WPL was the registered proprietor and therefore remains the owner of the legal estate by operation of section 58(1) of the Land Registration Act 2002. In support of this submission, Counsel for WPL and the Trustees rely upon the commentary in *Megarry & Wade, the Law of Real Property (9th Ed.)* at 6-117 which, it is submitted, suggests that there is an escheat in the present circumstances:

"Where the corporation dissolved is not governed by the Companies Acts, there will be an escheat of its real property. Leases owned by such a corporation, on the other hand, will pass to the Crown under the Crown's prerogative right to bona vacantia, i.e. personal property without an owner. Escheat does not determine any subordinate interest in the land in question, such as a mortgage or lease. The Crown takes the land subject to such rights. It sometimes happens that a company or corporation is dissolved at a time when it holds land on trust for a third party. Formerly, the Crown was not bound by trusts (even though it was bound by incumbrances), but the harshness of this rule to beneficiaries was ameliorated by statute. The position today is that the trust beneficiaries will, in practice, seek a vesting order, and this is so whether the land has passed to the Treasury Solicitor as bona vacantia or to the Crown Estate by escheat."

- ii)** second, on the basis that this Court can and should apply the law of Guernsey to the legal ownership of Walton Castle upon WPL's restoration. Whilst WPL's dissolution is not an issue of capacity to enter into a transaction, it is said that it is only a modest step for this Court to consider that WPL's status or

existence as a Guernsey registered company means that there is room to take an alternate approach by applying some system other than English law. In support of this proposition, Counsel for WPL and the Trustees relies upon a further passage in *Dicey, Morris & Collins* at 23-066:

"... when the English court is dealing with the effect on land in England of deeds and wills executed abroad or by persons domiciled abroad, there is room for applying some system of law other than English law (e.g. the lex loci actus or the lex domicilii), so far as concerns capacity and formalities. There is much force in this argument. But the English habit of applying English domestic law to all transactions affecting land in England is so inveterate that it seems unlikely that English courts would be prepared to apply any other law to questions of capacity or form."

- iii) third, that in a case such as this, where the foreign corporation is incorporated in a Crown Dependency, and where the company law of that Dependency provides that upon dissolution a company's assets vest *bona vacantia* in the Crown, the effect of the company's restoration on immovable property situated in England and Wales should properly be governed by the law of the Crown Dependency.

26. In my judgment, it is clear, for the reasons advanced by Counsel for MH and for the reasons set out below, the law governing the devolution of freehold property in England held on trust of land by a foreign registered company (which is subsequently dissolved) is English common law. The legal estate in such circumstances does not pass by escheat to the Crown but rather vests in it. Thus there is no automatic

revesting of the legal estate in Walton Castle in WPL upon its restoration to the Guernsey register.

27. The term "escheat" is a word of art pertaining to estates held by tenure and which broadly speaking refers to the reversion of an estate to the relevant donor. I would gratefully adopt the erudite description of the concept outlined by Lewison LJ in Pennistone Holdings Ltd v Rock Ferry Waterfront Trust [2021] EWCA Civ 1029 at [18] which states:

"Escheat is one of the last relics of feudal law. It is based on two propositions: (a) that all land in England is held of the Crown and (b) that no land can be without an owner. The first of these reflects the basic principle of tenure; namely that all land in England is owned by the Crown and that at some point in the past the Crown granted that land to a feudal tenant in chief. If the granted interest comes to an end, the land reverts to the Crown".

28. Given the feudal nature of tenure in real property escheat is engaged where an existing freehold interest reverts to the tenant's immediate lord, which in modern times is the Crown; see UBS Global Asset Management UK Ltd v Crown Estate Commissioners at [8].
29. However, there is a distinction to be made where real property is held by a company as a trustee in a trust of land. In those circumstances, upon dissolution of the company/trustee, the legal estate in that real property passes to the Crown and vests in it, subject to the trust. That operation is not by escheat which would only arise where a legal estate in property has been determined. In those circumstances, in appropriate cases the Court may vest a new legal title in the affected property in a restored

company by virtue of section 181 of the Law of Property Act 1925. By contrast, in the present circumstances, the legal estate continues in existence (i.e. it does not determine and is not therefore capable of being held by the Crown through the operation of escheat), per Jenkins J in Re Strathblaine Estates Ltd [1948] Ch 228 applying Re Wells [1933] Ch. 29 at p. 231:

"...the Court of Appeal In re Wells appears to have been quite clearly of opinion that an estate limited to a corporation in fee simple does not determine on the corporation being dissolved. The view taken by the Court of Appeal in the latter case is in my opinion clearly to be preferred and it follows that the legal estate in fee simple is not to be regarded as having been determined by the dissolution of the company in the present case. This conclusion accords with the view expressed by the editor of the third edition of Challis' Real Property, as set out at pp. 467-468. If the legal estate in fee simple formerly vested in the company was not determined by the dissolution of the company but is still in existence, there can be no question of creating any new legal estate, and s. 181 of the Law of Property Act, 1925, has no application."

and

"...in default of any other owner, such legal estate must under the general law have passed to the Crown, subject to the trust, on the principle that there must always be some owner of a legal estate in fee simple." (my emphasis)

30. In light of my findings above, WPL's reliance on section 181 of the Law of Property Act 1925 is of no application. That section, in broad terms, provides that where, by reason of dissolution of a corporation, a legal estate in any property has determined, the Court may by order create a corresponding estate and vest the same in the person

who would have been entitled to it. Section 181 is not engaged as the legal estate in Walton Castle has not determined.

31. WPL's reliance on section 58(1) of the Land Registration Act 2002 is also misconceived. The conclusiveness of the register does not provide an answer in the present circumstances. Section 58 is only engaged once a disposition has been completed by registration. In particular, section 27(1) of the Act provides that a disposition does not operate at law until the registration requirements are met. Where property is held by a corporate proprietor prior to its dissolution, the disposition to the Crown operates by law notwithstanding the absence of registration requirements reflecting the disposition. Section 27(5) makes clear that there is an exception to the dispositions by operation of law to which the section applies. It follows that the mere fact that a company has been named as the registered proprietor throughout the events described above does not affect the legal position, which is that legal title in the property is vested in the Crown and remains so, unless and until an order is made vesting it in another person.

32. I reject Counsel for WPL / the Trustees' submission that this Court should take an alternate approach by applying Guernsey law rather than English law to determine the issues of devolution in this case. Whilst in certain other circumstances the *lex domicilii* or *lex loci actus* may be considered as relevant by the Court, in the present case, I see no force in the argument or any principled basis which would lead to the conclusion that an alternate approach to the general principle that the *lex situs* will govern devolution in the present case; put simply, "*land in England is subject to English law*" per Lewison LJ in *Penninstone* at [20].

33. I would also refer by analogy to Lizzium Ltd v Crown Estate Commissioners [2021] EWHC 941 (Ch) per Master Clark at [39] – [40] in which the Master observed, (referring to the 1930 and 2014 Companies Acts of Gibraltar) that the legislation "... *does not, however have the extra-territorial effect of re-vesting English land in the Gibraltar company*". Similarly, the Guernsey (Companies) Law 2008 Acts have no extra-territorial effect and it would be wrong for this Court to accede to the law of another jurisdiction in these circumstances. In my view, such an approach would also be inconsistent with the general rule of private international law that a foreign Court does not have jurisdiction to make orders relating to or concerning land in another jurisdiction.
34. It follows from my conclusions above that it is no answer for WPL / Trustees to refer to the effect of the law of a Crown Dependency to apply; the company law of the Dependency does not determine the devolution of real property situate in England for the reasons I have given.
35. Walton Castle does not therefore automatically re-vest in WPL upon its restoration to the Guernsey register.

Issue 2: Does MH have standing to seek a vesting order?

36. MH's primary case is that MMSA validly assigned its 61.06% beneficial interest in Walton Castle to her by a deed of assignment dated 10 December 2017 in satisfaction of a debt of some £792,000 plus interest owed to her by MMSA under the July 2017 Tomlin Order. That debt was the subject of the interim charging order made in her favour over that beneficial interest on 28 November 2017.

37. MH's secondary case on this point is that even if the assignment was invalid, or could be set aside or impugned, the Trustees accept that MH would have a valid charging order over MMSA's beneficial interest in Walton Castle securing a debt which stood at £854,140.31 in July 2018 at the time the charging order was made final.
38. It is said that the equitable charge held by MH over MMSA's beneficial interest pursuant to such charging order would confer upon her a sufficient interest to apply for a vesting order, just as it would have conferred upon her a sufficient interest to apply for an order for sale under section 14 of the Trusts of Land and Appointment of Trustees Act 1996: see Midland Bank v Pike [1988] 2 All ER 434.
39. The Trustees contest the validity of the deed of assignment. In summary, they say that the assignment to MH is invalid on the basis that: (i) it is inconsistent with the fact that the interim charging order of 28 November 2017 was made final in July 2018, which is not compatible with the 61.06% beneficial interest in Walton Castle in the meantime being assigned by MMSA to MH; (ii) they question whether it was validly executed by RH, as chair of MMSA, at a time when MH had been granted a power of attorney over his affairs and RH is alleged to have been "too ill to understand business affairs"; and (iii) any such assignment in satisfaction of the debt would have been at an undervalue.
40. In my judgment, MH has sufficient standing to apply for a vesting order in the first claim. MH's evidence, particularly that contained in her witness statement dated 20 April 2021 explains the purported inconsistency outlined by the Trustees; in broad terms it would appear (and I accept) that the final charging order was likely to have been pursued by mistake and/or by the instructed solicitors who were not otherwise aware of MH's assignment of MMSA's beneficial interest which would have rendered

a final charging order redundant. I accept Counsel for MH's submissions that the Trustees have adduced no proper grounds for asserting that the assignment is not authentic and is not a point that can be properly pursued in this case.

41. Similarly, the Trustees have not advanced any challenge to the authenticity of the signature on the relevant deed of assignment or that it was signed by RH in his capacity as chair of MMSA. There has been no evidence adduced beyond the mere supposition that RH was "*too ill to understand business affairs*" which I reject. In addition, the assertions that any execution of the deed was not otherwise in accordance with applicable formalities under Costa Rican law does not arise; the Trustees have not adduced appropriate evidence for the Court to properly consider any such contention.
42. As regards the allegation that the assignment was at an undervalue, I agree with Counsel for MH's submissions that this would only be actionable if at all by a claim by MMSA to set aside the assignment.
43. Further, even if the assignment could be successfully challenged on any of the bases alleged by the Trustees, in my judgment, MH's charging order over MMSA's beneficial interest confers upon her sufficient standing in any event; Midland Bank v Pike [1988] 2 All ER 434.

Issue 3: To whom should the property be vested?

44. The Court has a very wide discretion under section 44(ii)(c) of the Trustee Act to determine in whose favour a vesting order should be made. The power to vest legal title pursuant to the Trustee Act is unfettered but should be exercised in accordance with judicial principles.

45. Section 44(ii)(c) of the Trustee Act 1925 provides (in material part) as follows:

" In any of the following cases, namely:—

(i) Where the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power;

(ii) Where a trustee entitled to or possessed of any land or interest therein, whether by way of mortgage or otherwise, or entitled to a contingent right therein, either solely or jointly with any other person—

(a) is under disability; or

(b) is out of the jurisdiction of the High Court; or

(c) cannot be found, or, being a corporation, has been dissolved;

.....

the court may make an order (in this Act called a vesting order) vesting the land or interest therein in any such person in any such manner and for any such estate or interest as the court may direct, or releasing or disposing of the contingent right to such person as the court may direct:

Provided that—

(a) Where the order is consequential on the appointment of a trustee the land or interest therein shall be vested for such estate as the court may direct in the persons who on the appointment are the trustees; and

(b) Where the order relates to a trustee entitled or formerly entitled jointly with another person, and such trustee is under disability or out of the jurisdiction of the High Court or cannot be found, or being a corporation has been dissolved, the land interest or right shall be vested in such other person who remains entitled, either alone or with any other person the court may appoint." (my emphasis)

46. There is little judicial guidance on the principles which should be applied in the face of competing claims for vesting orders under section 44(ii)(c). That is perhaps not surprising in light of the latitude afforded to the Court to exercise the power as it sees fit when considering all of the circumstances of the case.
47. Counsel for MH submits that the dictum of Deputy Master Marsh in Potier v Treasury Solicitor (Bona Vacantia) [2021] EWHC 1524 (Ch) at [38] is apposite and (although the case concerned the power of the Court to make vesting order of shares held by a dissolved company under sections 41 and 51 of the Trustee Act 1925) the principles equally apply to a vesting order sought in relation to real property in the present circumstances. There, the Master observed:

"The jurisdiction under both section 41(1) and section 51(1) will be exercised in a way that is essentially pragmatic. The discretion is a very broad one. The court will make an order vesting shares held by a dissolved company in trust in the person who is beneficially entitled to them. The existence of a trust prevents the asset from becoming bona vacantia but there is nothing in the section that indicates the court must strive to reinstate as closely as possible the terms of the trust, particularly where the asset is held on a bare trust that is subject to a bare

sub-trust. It seems to me the court will usually in those circumstances wish to vest the asset in the person who is beneficially entitled to it."

48. I accept those observations as applicable in the current case which indeed illustrates the broad nature of the discretion afforded upon the Court. The consequence being that the Court is not obliged to seek to reinstate the *status quo* as it stood prior to the dissolution of a company, nor is the Court required to necessarily vest the property in the person who is identified as holding the majority beneficial interest; in simple terms, the Court will exercise its power to do justice in all the circumstances.
49. MH's case is that the Court should make a vesting order in MH's favour in light of her more immediate interest in Walton Castle. It is said that this is a pragmatic solution which would enable the property and business conducted from it to survive and avert what is said to otherwise be an inevitable sale of the property and destruction of the business operating in Walton Castle.
50. Further, Counsel for MH contends that the following factors lead to the conclusion that legal title to Walton Castle should be vested in it:
 - i) MH holds the majority 61.06% beneficial interest in Walton Castle as assignee of MMSA's share, or alternatively, if the assignment was invalid, the value of her interest under the charging order over MMSA's share substantially exceeds the value of WPL's beneficial interest;
 - ii) MH is in occupation of Walton Castle and operates the wedding and events business therefrom through WCEL. It is said that it is MH alone who has a "real" stake in the bricks and mortar of the property, and it is through her endeavours in carrying on the business that *inter alia*, the property has been

maintained and that, in contrast, WPL has never held anything other than a mere economic interest;

- iii)** MH is in a position to redeem the F2F mortgage loan through a mortgage offer now obtained from Together Commercial Finance Ltd which it is said will avert the immediate risk that Walton Castle has to be sold to redeem the F2F loan, resulting in the destruction of the business; in contrast, WPL has put forward no proposals whereby the F2F loan may be redeemed other than by a sale of Walton Castle;
- iv)** more generally, if a vesting order were to be made in favour of WPL, there is nothing to suggest that the Trustees, as ultimate shareholders, would have any reason or basis to retain Walton Castle as opposed to seeking its sale in order to realise any value in WPL which may be available for RH's bankruptcy estate after satisfaction of WPL's own creditors.

51. The Trustees' case is that the Court should make a vesting order in the name of WPL in order to reinstate the *status quo*. It is said that WPL was previously the registered title owner prior to its dissolution and the Court should therefore reinstate that position now that the corporation has been revived. In particular, Counsel for the WPL / Trustees submits, in summary, that the following factors mean that an order should be made in WPL's favour:

- i)** the Director of WPL is a professionally appointed person who owes duties to the creditors of WPL and is capable of acting as an independent trustee;
- ii)** The Trustees are professionals who are already officers of the Court;

- iii) Although WPL will be a foreign trustee, this is a case in which it would be appropriate to make an appointment;
- iv) it is alleged that MH's conduct gives rise to questions of ethical and professional impropriety; and
- v) the mortgage loan appears to have been obtained in the name of a company owned by MH, Walton Castle Cleveland Ltd ("WCCL") and not by MH in her own name.

52. Whilst there is some force in the contention that the Court (whilst not obliged) should seek to reinstate the circumstances as closely as is possible to the *status quo* as matters stood prior to the dissolution of WPL, in my judgment the wider circumstances of the case militate toward the Court exercising its discretion to vest legal title in MH.

53. I reach this conclusion having regard to all of the circumstances of this case, including the following matters:

- i) The *status quo* has changed quite materially. Ultimate control of WPL is now very different compared to the position as it stood prior to WPL's dissolution on 12 May 2020. As acknowledged by the Trustees, they now have "significant oversight" over WPL, consequent upon their appointment on 21 August 2020. As RH's trustees in bankruptcy they of course have certain duties to obtain, realise and distribute available assets in RH's estate. The Court cannot therefore realistically restore the *status quo* to in a manner which bears any resemblance to the existing state of affairs prior to dissolution; matters have moved on.

- ii)** MH is in occupation of Walton Castle and operates the wedding and events business therefrom through WCEL. On balance, it would appear that the business conducted from Walton Castle is more likely to remain in continuous operation if a vesting order is made in MH's favour as opposed to WPL's. Whilst this factor is not determinative, I consider the continuity of the business currently conducted at Walton Castle to be an issue which can be properly considered by the Court and militates in favour of vesting legal title in MH in all the circumstances;

- iii)** MH's evidence contained in her fifth witness statement is that WCCL (a company in which she says she is the sole director and shareholder) has received a formal offer for refinance from Together Commercial Finance Limited to the sum of approximately £1.4m which would mean the F2F mortgage loan could be redeemed. I accept that this evidence suggests that MH has at least the potential means with which to procure that the risk (whether real or fanciful) of F2F redeeming their loan and seeking to enforce their charge through the sale of Walton Castle is averted, which would otherwise appear likely to lead to the demise of the business operated from Walton Castle.

- iv)** Whilst WPL has sought to cast doubt on MH's suitability to act as trustee, there is no compelling evidence on this issue before me beyond mere assertion. I do not find the evidence relied upon by the Trustees / WPL as contained in Mr. Thomas' First, Second and Third Witness Statements to lead to any basis upon which to regard MH as inappropriate to act as trustee in the present circumstances.

- v) It would appear that, on balance, vesting legal title to Walton Castle in MH is the pragmatic approach in the circumstances. Whilst the Trustees contend that it will be more onerous for WPL to realise its beneficial interest in Walton Castle if vested in MH (because it would then have to apply for an order for sale under section 14 of the Trusts of Land and Appointment of Trustees Act 1996, ("**TOLATA**")), it is likely that if vested in WPL, a claim would have to be brought by it in any event in order for WPL to obtain possession and effect a sale of the property in the face of MH's opposition and beneficial interest. Of course, it remains open to the Trustees / WPL to apply under TOLATA in due course for an order for sale to seek to realise their beneficial interest if such a course is deemed necessary.

- vi) Whilst the Trustees have raised concerns that MH may act in a way that may frustrate / delay a sale, in my judgment, there is no evidence before the Court which leads to that conclusion. As mentioned, if necessary MH's conduct may be regulated through TOLATA, which provides a measure of protection to WPL, the Trustees and other interested parties with respect to the administration of the trust.

54. For the reasons given, I shall make an order vesting legal title to Walton Castle in the name of Margarita Hamilton.