Neutral Citation Number: [2023] EWHC 1700 (Ch)

Case Nos: CR-2023-LDS-000509 & CR-2022-LDS-000487

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
INSOLVENCY AND COMPANIES LIST (ChD)

Leeds Combined Court Centre
1 Oxford Row, Leeds LS1 3BG

Date: 07/07/2023

Before :

HH JUDGE DAVIS-WHITE KC
(SITTING AS A JUDGE OF THE CHANCERY DIVISION)

- -

IN THE MATTER OF WILTON UK (GROUP) LIMITED
AND IN THE MATTER OF THE INSOLVENCY ACT 1986
Between :

CR-2023-LDS-000509

HARTLEY PENSIONS LIMITED
(IN ADMINISTRATION) **Applicant**
- and -
WILTON UK (GROUP) LIMITED **Respondent**

And Between

CR-2022-LDS-000487

(1) COLM JOHN O'SULLIVAN
(2) MOST CONSULTING LIMITED

Petitioners

-and-
WILTON UK (GROUP) LIMITED

Respondent

- -
- -

Ms Clara Johnson (instructed by **DWF Law LLP**) for the Applicant in CR-2023-LDS-000509
Mr Steven Fennell (instructed by **MD Law (Yorkshire) LLP**) for the Petitioners in CR-2022-LDS-000487
Mr Hugo Groves (instructed by **Locke Lord**) for Mr Nicholas Barnett (referred to in evidence in the case)
Mr Daniel Odutola, Mr Edward Magan and **Mr Simon Nuttall** each in person claiming to be creditors of Wilton UK (Group) Limited

Hearing dates: 26-27 June 2023

- -

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.

.....

HH JUDGE DAVIS-WHITE KC (SITTING AS A JUDGE OF THE CHANCERY DIVISION)

This judgment was handed down by the Judge 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 10:30m on 7 July 2023

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Judge Davis-White KC :

Introduction

1. On the application of Hartley Pensions Limited (in administration) (the "Applicant"), by application notice issued on 9 June 2023, I made an administration order, with retrospective effect, in relation to Wilton UK (Group) Limited ("the Company") on 27 June 2023. At the time I gave an indication of my main reasons in brief but indicated that I would hand down my written reasons at a later date. These are my reasons. I took this course because it appeared to me important that a decision was made as soon as possible but in circumstances where time was needed to prepare a judgment setting out my full reasoning, not least given the widespread interest generated by this case.

2. An apparent appointment of administrators had been made out of court. Its validity was in doubt. The main issue that I had to decide was whether to (a) place the Company into administration (by way of regularising any invalidity in the original appointment) or (b) make a winding up order on a winding up petition.

3. As I shall go on to explain, matters may not have been quite that simple because, as regards the winding up petition, an issue as to whether the petition debts in question were disputed had not been formally resolved and it was not clear to me, for example, whether, in any event, the further hearing of the petition might need to be advertised. Furthermore, the suspension of the Petition under paragraph 40 of Schedule B1 to the Insolvency Act 1986 ("IA 1986") could only be lifted if I made a finding that the appointment of administrators was invalid, whereas for the purposes of the administration application I was only asked to assume that it might be invalid.

4. Be all this as may be, within minutes of my starting to give judgment, matters changed when I was (politely) interrupted to be told that an agreement had been reached between the Petitioners who had presented the winding up petition (the "Petitioners") and the applicant for the making of an administration order (the "Applicant"). The Petitioners withdrew their opposition to the making of an administration order as sought, whilst reserving their position as to costs. That, of itself, did not change my function. First, an administration order cannot be made by consent; the court must be satisfied that there is jurisdiction to make the order and that it is appropriate to do so. Secondly, there were a number of alleged creditors of the Company who had supported the winding up petition and who opposed the making of an administration order. A winding up petition is a class remedy. A company and a petitioner cannot of themselves by agreement among themselves necessarily prevent it from proceeding further. Other creditors might have wished to apply to be substituted as petitioners on the winding up petition and, as I understood it, those claiming to be creditors of the Company who appeared in front of me in addition to the Petitioners, apparently supporting that petition, were not parties to the "settlement" reached between the Petitioners and the Applicant.

5. In reality, therefore the choice before me may more accurately have been one as to an immediate administration order or continued winding up proceedings. No-one invited me to consider making an interim order under paragraph 13 of Schedule B1 to the Insolvency Act 1986. If I made an administration order then the winding up petition would fall automatically to be dismissed (see IA 1986, Schedule B1 para. 40). Ultimately, this is what happened as a result of my decision.

The Company, its business and its relationship with the Applicant

6. At this point it is probably helpful to explain a little more about the Company.

7. According to the last filed accounts for the Company, for the year ended 30 April 2020, the Company is a wholly owned subsidiary of an Isle of Man incorporated company, Wilton Group Limited. As at that date the accounts show the Company to have had 10 subsidiaries. Many have the word "Wilton" in their name. However, there were then also two "Hartley" named companies, of which the Applicant (Hartley Pension Limited) is one. The principal activity of the "group" in the year in question is described as being acting as "a holding company and as a provider of professional, financial and pension services."

8. As regards the Applicant, Mr Kubik for the Applicant has given the following further details in his 4th witness statement:

> "*6. By way of background, HPL is a personal pension service provider and was incorporated in England and Wales on 4 March 2015 with company registration number 09469576, under the name Hartley Lifetime Pensions Limited. HPL is authorised and regulated by the Financial Conduct Authority ("FCA") with FCA reference number 735936. The scope of HPL's business is providing Self-Invested Personal Pension schemes ("SIPPs") and Small Self-Administered scheme.*
>
> *7. HPL provides and operates 9 pension schemes (the "Schemes") which govern the 16,646 SIPPs currently on HPL's books. The SIPPs are collectively registered, in accordance with the Finance Act 2004.*
>
> *8. HPL entered administration on 29 July 2022 by way of an out of court appointment by the director, Michael Anthony Flanagan, made pursuant to paragraphs 22 and 29 of Schedule B1 of the IA 1986.*
>
> *9. I can confirm that the current proposal for the winding down of HPL's business is for HPL to issue a claim under Part 8 of the Civil Procedure Rules within the next few months, in order to seek a declaration to impose a proposed exit and administration charge on the HPL clients, to ensure an orderly transfer out of HPL's SIPP clients to new operators."*

9. As regards the business relationship between the two Companies, Mr Kubik continues:

> *"10. The Company provides a number of services to HPL, including: information technology services, property management services and corporate legal and regulatory compliance services.*
>
> *11. The Company provides access to IT servers which HPL utilises including all e-mail, domains and document management systems.*
>
> *12. The Company provides property management of the SIPP property assets including:*
>
> *(1). creating and sending rent demand and rent invoices due;*

> *(2). execution of lease documents, completion of VAT folders with the information required to carry out reviews;*
>
> *(3) corresponding with clients for missing documents for the records to prove HMRC compliance; and*
>
> *(4). liaising with members and their advisors in relation to sales management services and execution of sales documentation.*
>
> *13. The Company also provides corporate and legal services, including, filing dormant annual financial statements and preparing and filing confirmation statements and annual accounts for HPL.."*

10. It was explained to me how dependent on the Company the Applicant is, not least in terms of the data retained and managed by the Company. The administrators of the Applicant have also confirmed to the FCA their view of the impact that an immediate cessation of trade of the Company would have on the Applicant (and its circa 16,000 clients) as a customer of the Company for its services.

11. In an email dated 23 June 2023, the FCA set out its position as follows:

> "*As you are aware, the FCA is the regulator of Hartley Pensions Limited – In Administration ('Hartley'). It has a statutory objective to secure an appropriate degree of protection to customers under Section 1C(1) of FSMA.*
>
> *The FCA can confirm that you have informed us of an outstanding winding-up petition in relation to Wilton UK (Group) Limited ('Wilton'), who you have described as an "essential supplier" to Hartley. You have also informed us that should Wilton no longer be able to provide services to Hartley, this will impact Hartley's ability to conduct regulated business.*
>
> *Assuming this to be true, this would have a detrimental effect on Hartley's customers.*
>
> *The FCA has urged the administrators of Hartley to take steps to minimise any such impact, as much as possible."*

12. In the evidence before me it was suggested that it would be easy to outsource the work carried out by the Company for the Applicant and that the administrators of the Applicant were simply wrong in their assessment of the need, at least in the immediate future, for the continued provision of services from the Company. On the evidence before me this assertion (and it was little more than that) is one that I cannot accept. The administrators of the Applicant are professionals who have been administrators for almost a year and in my judgment something more is needed than mere assertion to counter their view and evidence on the point.

13. It was also suggested that the Applicant had presented the Application on the basis that the administration was to benefit it and that it (or Mr Kubik) had failed to recognise that benefit to creditors overall had to be established. I consider this to be an unfair and

incorrect criticism. Mr Kubik dealt with the position of the Applicant (a) because it was making the application and he was one of the joint administrators of the Applicant and (b) to explain why it was proposed that the Applicant would fund estimated trading losses of the Company in administration through a charge to pensioners. However, there was also evidence from Mr Andronikou put forward by and relied upon by Mr Kubik setting out the benefits of administration more generally.

The evidence before me and the course of the current proceedings

14. On 12 June 2023, HH Judge Klein considered the application on the papers and, without a hearing, gave directions directed at a hearing in the applications list in Leeds on 16 June 2023. On 16 June 2023, having heard from then Counsel acting on that day (not being the Counsel appearing before me), he adjourned the application to 26 June with a time estimate of 3.5 hours. Sadly that time estimate was woefully inadequate and no party approached the court to amend the time estimate. Leeds BPC are not able to have a running list of cases (that is cases which continue until they finish) and it is purely fortuitous that I was able to continue to hear the case the following day.

15. Furthermore, although evidence in reply was ordered to be filed and served by noon on 22 June 2023 a number of persons claiming to be creditors supporting the petition were, in many cases, apparently provided with "template" witness statements by the Petitioner's solicitors and that evidence, in some cases extensive and making very serious allegations, was served on 22 and 23 June 2023. Indeed, a supplementary bundle had to be asked for and provided well after the time for the lodging of bundles and after preparation had been commenced. Skeleton arguments lodged by Mr Fennell and Ms Johnson were also unable to take account of all the evidence that had been filed. Given the close connection between the production of much of that evidence and the Petitioners' solicitors it is unfortunate that it was not filed and served with the Petitioners' evidence by noon on 21 June, as ordered.

16. A further consequence was that, because of serious allegations made against his client, Mr Groves was instructed to appear to observe the proceedings and so far as necessary to make representations on behalf of his client. In the end, and in the light of the way in which matters developed, he did not feel any need to make any representations.

17. The late service of evidence and the hearing date also meant that a number of allegations were not capable of being answered by further evidence. The parties nevertheless considered that it was appropriate to proceed rather than to seek an adjournment. However, I bear in mind the general fairness of the position and the fact that allegations made may be unanswered by evidence because there simply was not time to do so.

18. A further consequence was that Mr Groves provided me with an email sent by Mr Flanagan to his client dated 26 June 2023 in which Mr Flanagan commented upon some of this late evidence. As I shall explain, in large part, in addition to denying serious allegations made against him he also denied the status of many, if not all, of the alleged creditors of the Company as such. The allegations are of course not contained in a witness statement.

19. At the start of the hearing I was also provided with a letter from the firm of Rustem Guardian Solicitors Limited, acting for Mr Flanagan in a criminal matter concerning the Financial Conduct Authority (the "FCA"). By that letter an adjournment was sought

on the basis that Mr Flanagan had only had notice of the hearing before me after 5pm on 23 June 2023. Mr Flanagan had in fact lodged a witness statement dated 15 June 2023. For the reasons given by me at the time, I refused that informal application.

20. I was also informed of a concern raised by a person who had been a director (whether she still was a director was unclear) and who, as one of three trustees, had been the recipient of (among other things) the Debenture granted by the Company but the validity of which was in issue. The concern was of the shortness of time available to instruct lawyers given the lateness of the receipt of the bundle. Again, for reasons given at the time, I did not consider that I should further adjourn the hearing.

21. Because the identity and amounts of creditors of the Company are so unclear and apparently, in many cases, disputed, I made clear at an early stage that my initial view was that I would not be able to come to any view as to what position creditors of the Company as a whole took. I suggested that the most that I might be able to do was to consider individual arguments raised on the merits but without coming to any view as to whether (where there was an apparent dispute as to the debt) the debt was good or whether the majority of creditors took that view or not. I further took the initial view that it would not be possible to say that proposals put forward by the Administrators, if appointed, would either be voted down or voted through by creditors so that consideration of that issue would not assist me in making my decision.

22. This was against a background where, at least apparently, reliance was placed on the quantum of particular creditors' claims. By way of example, Ms Johnson relied on the position taken by a Mr Michael Augousti. Mr Augousti has submitted a proof in the purported administration in a sum of over £9.1 million. However, his claim is being litigated by him in the London Circuit Commercial Court as one of three claimants against defendants of whom the Company is not one. Mr Augousti is but the third claimant, the claim being based on breach of a loan agreement (failure to make advances to the first claimant in those proceedings on time or at all) entered into with the first claimant. It is said that a trust in his favour has been declared of the benefits of the relevant claims. As regards the defendants to the proceedings, he asserts that there has been some form of novation so that the Company is liable. However, that is not pleaded in the London Circuit Commercial Court proceedings. The claim is one for unliquidated damages. Mr Flanagan denies any claim at all and certainly one against the Company.

23. In those circumstances Ms Johnson submitted, in her skeleton argument:

> "*Mr Michael Augousti, whose debt against the Company totals £9,096,517. Mr Augousti's claim represents 94% of the debts of those creditors who have submitted proofs, as shown on the list of creditors. Whilst this list does not include the debts of the Petitioning Creditors nor the supporting creditors at the hearing in April 2023 (because they have not yet submitted proofs of debt), those claims are still dwarfed by Mr Augousti's debt. As such, Mr Augousti will be the creditor has the most to lose or gain from the insolvency process and significant weight should therefore be given to his views."*

24. Mr Augousti's debt is not clearly established and is disputed. Limited numbers of creditors have submitted proofs. Proofs have not been adjudicated. There is no certainty

as to the overall size of creditors' claims nor of creditors' identities. Further, somewhat surprisingly, Mr Augousti's claim to a novation of the relevant liabilities so that they were taken on by the Company does not appear, at least on the face of things, to be based on dealings with him or the two other claimants in the proceedings that they have brought, but rather on the evidence of alleged novations concerning the Petitioners' claims. In his evidence Mr Augousti says:

> " *having seen the evidence filed in support of the winding-up petition issued against the Company ("Petition"), it is now clear to me that the Claim should in fact have been issued against the Company as my contract, much like the Petitioners', was novated to the Company*."

25. It seems to me clear that Mr Augousti's alleged debt against the Company is far from clear and I reject the submission of Ms Johnson, which I set out above, as to giving his views special weight and authority. His is but one example, similar doubts apply to other alleged creditors who support the Petitioners' position.

26. As the hearing progressed my initial views became firmer. Ultimately, I did not understand anyone to persist in an allegation that views of alleged creditors before me should be accorded particular weight because of the quantum of their claim, either in absolute terms or as a percentage of other claims against the Company. Nor did I understand anyone to suggest that I could be satisfied that the proposals of the Administrators (if the Administrators were appointed) would inevitably be voted through or voted down. I proceed on that basis.

27. The evidence before me included a number of witness statements from Mr Kubik (one of the joint administrators of the Applicant), Mr Andronikou (one of the three purported administrators whose appointment was in doubt and who it was proposed would be appointed administrators on the Application) and Mr O'Sullivan for the Petitioners. In addition I had witness statements from:

(1) Mr Augousti (supporting the application);

(2) Mr Edward Magan (supporting the Petitioners);

(3) Mr Craig Grant (supporting the Petitioners);

(4) Mr James Landon (supporting the Petitioners);

(5) Mr Nicholas Cusack (a licensed insolvency practitioner prepared to act as a "conflict" administrator should the court require one);

(6) Mr Daniel Odutola (supporting the application);

(7) Mr Aadil Masood (supporting the Petitioners);

(8) Mr Simon Nuttall (supporting the Petitioners);

(9) Mr Denis McHugh (supporting the Petitioners);

(10) Mr Edward Stone (supporting the Petitioners).

28. At the hearing I heard orally from Mr Odutola, Mr Nuttall and Mr Magan.

29. As regards those alleged creditors supporting the Petitioners, in many cases it is clear that their actual concern is to avoid the appointment of the proposed administrators and instead to have "independent" persons or the Petitioners' nominees as liquidators appointed as officeholders. It is less clear that they have views or even an understanding as to the difference between an administration and a liquidation and, in many cases, unclear as to precisely what evidence in the proceedings they have been shown. Some make clear that their concerns are as a result of reading, and mirror, the concerns raised by Mr Magan's evidence. These are all further reasons why I consider that I should look at the merits of points raised but not assume that such points are held by creditors and/or by any particular number or proportion of creditors.

30. As regards the status of the alleged creditors, I have said the position is far from certain. I have dealt with Mr Augosuti. I turn to the others.

31. Mr Magan asserts that he is a creditor in a sum of just over €202,000 which he says has been misappropriated from a client account of a different Wilton company. Mr Flanagan denies any claim and in any event a claim against the Company. The debt is clearly disputed and at this stage is not clearly proven.

32. In a 19 page witness statement Mr Magan proceeds to set out the results of his research and his conclusions that:

> "*the Company is part of a substantial, complex, multi-jurisdictional group, with tens, if not hundreds of companies, and a legacy of thousands more companies, mostly registered as "dormant" with exempt or micro accounts, that require a scrupulously professional insolvency practitioner to examine [and that] the directors and shareholders of the Company were involved in organised crime, and those allegations are now surfacing in the media*".

33. As regards the Company he also refers to what he considers to be:

> "*very substantial leakage of assets, of millions of pounds, from the Company in favour of*"

third parties and/or Mr Flanagan and his associates. These allegations are denied. I cannot express any view about them on the limited evidence before me. If there are matters involving the Company requiring to be investigated, and leaving aside the criminal and regulatory inquiries that Mr Magan says are already underway, the position will be investigated by whichever officeholder is appointed. The main relevance of Mr Magan's evidence is on the issue of whether or not Mr Andronikou should not be appointed because, as Mr Magan would have it, there is at least a risk he is not independent but is part of what he described as "the Wilton gang".

34. One of the matters he raises is the identity of the administrators as appointed in April 2023. Leaving aside the fact that ultimately Mr Flanagan and persons associated with him made the appointment (as purported qualifying floating chargeholders), Mr Magan suggests that the appointment came about by way of a recommendation by Mr Groves'

client and the firm he works for, Libertas, and/or that there are connections (which as identified do not seem to me to demonstrate any concerns) between persons at Quantuma and persons working for Libertas (eg certain individuals went to the same university).

35. As I understood it, Mr Magan ultimately accepted that certain points he raised were not only consistent with his case but were equally consistent with there being no concern about the appointment of the proposed administrators. In my judgment, the matters relied upon are neutral and do not cast doubt upon any of the proposed administrators' fitness to be appointed in any respect.

36. Mr Grant asserts that he is a creditor of the Company in the sum of just under US$93,000. However, this claim is said to have arisen in connection with flying services provided by Mr Grant to a Mr Bredenkamp and to be a debt owed by a company called Scotlee Holdings (Private) Limited ("Scotlee"). The debt is said to be owed by the Company because it is the "alter ego" of Scotlee. Mr Flanagan asserts that neither the Company nor any other Wilton company has had any dealings with Scotlee. The debt is clearly disputed and the claim (on the limited evidence before me) tenuous.

37. Mr Landon claims to be a creditor of the Company in a sum of just over £2.3 million. Leaving aside the issue of whether there is any claim at all, it is far from clear that any claim lies against the Company. There is no evidence that the Company (as opposed to other Wilton entities) had any involvement at all in the matters that he complains of. Mr Flanagan makes a number of points. One of them is critical of the apparent link that Mr Landon seeks to make between the Kinahan drug cartel, said to operate out of Dubai, and Wilton Management Limited on the sole basis that the latter has an office in Dubai, which is where the drug cartel is said to operate. At this stage it is enough to say the debt is disputed.

38. Mr Odutola asserts that he has an employment claim of over £123,000 against the Company. It is apparently being litigated in the County Court. Mr Flanagan, for what it is worth, asserts that the claim should be addressed to the Applicant. The debt is therefore disputed as matters stand. Apart from supporting the administration, Mr Odutola asserts that he has made a data subject access request to the Company which, he suggests, would be answered in administration but not in liquidation. On the face of things I cannot see that this would be so. He suggests that in liquidation all data processing would simply stop. I am far from clear that this would mean his request would not have to be deal with. However, if data processing is ended, it may be that even if the data subject access request was not complied with there would be (on this scenario) no further data processing of any data of Mr Odutola and little need for the request to be answered. In any event, in the scale of things this is a minor advantage of administration over liquidation and I give it little weight.

39. In addressing the court orally, Mr Odutola asserted that he had previously been the group operations director who had acted as "whistleblower" (to whom was unclear to me) regarding what he considered to be unlawful and unethical conduct regarding pensioners. As such he echoed, in broad terms, the concerns raised by others. He also confirmed the great reliance on the Company that the Applicant had in terms of administering the relevant pensions.

40. Mr Masood claims to be a creditor in a sum of just over £3,000 as an employee. Mr Flanagan denies the claim and says that he believes that it had already been to one court and rejected. I have to assume it to be disputed.

41. Mr Nuttal is, as I understand it, a pensioner who has pensions or investments with the Applicant. The assets of the pension funds are said to be held by subsidiaries of the Company. He asserts that the Company is in debt to the Applicant and claims as a "contingent creditor" of the Company but it is unclear at this stage as to what his claim might be. Understandably, he is concerned by what he described as the "shambles" that the Applicant has been left in regarding absence of adequate records and the uncertainties and delays that the relevant pensioners are facing. He also made clear his view that Mr Flanagan has stolen money from pensioners by taking money from the Applicant.

42. Mr McHugh claims to be a creditor in a sum of just over £10,500 in respect of unpaid holiday pay. Mr Flanagan says that the claim (if there is one) is one against the Applicant and believes that the claim has been withdrawn. Again, I cannot assume that the claim is a good one.

43. Mr Stone claims to be a lawyer instructed by the Company who has not been paid for his services and who has taken an assignment for the claim of his co-counsel. The total claim is for just over US$15,300.

44. I should re-iterate that, as I have said, I have taken into account the points made in all the evidence that has been filed including that filed by persons who claim to be creditors and whose debts appear to be disputed. It may turn out the debts are valid but at this stage that cannot be assumed. The relevance of their disputed position is simply that I am unable to identify any particular majority of creditors in favour or against the Applicant's proposals.

The purported appointment of administrators to the Company on 3 April 2023

45. As I have said, the background to the application was one where there were doubts about the validity of the purported appointment of administrators of the Company on 3 April 2023.

46. The position was that three licensed insolvency practitioners from the firm of Quantuma Advisory Limited had apparently been appointed administrators of the Company on 3 April 2023 by qualifying floating chargeholders. The three administrators were Mr Andrew Andronikou, Mr Michael Kiely and Mr Chris Newell of Quantuma Advisory Limited (the "Administrators").

47. That purported appointment had been made the day before the winding up petition that I have referred to, presented in July of 2022 and brought by Mr O'Sullivan and Most Consulting Limited, was due to come before the court to decide whether or not the petition should be dismissed on the grounds that the petitioning debts were bona fide disputed on substantial grounds.

48. The effect of the (apparent) appointment, assuming it to be valid, was to suspend the winding up petition.

49. Nevertheless, on 4 April 2023, DDJ Temple made an order which recited that, on the evidence before the court, the defence of the Company to the petition debt claimed by Most Consulting Limited did not appear to be bona fide and substantial and that witness statements made on behalf of the Company did not appear to provide a proper explanation for matters that the court had, by an earlier order, identified as requiring explanation. Those recitals laid the grounds for various applications for costs which have since been dealt with.

50. The purported appointment of administrators on 3 April 2023 was made by Mr Flanagan and two trustees of a trust called the Wildwood Trust, apparently administered in the Isle of Man. The trustees in question were Ms Nicole Hewson and Ms Margaret Flanagan (the "Trustees"). Mr Flanagan and Ms Hewson were (and are still recorded at Companies House as being) directors of the Company. Ms Flanagan is a close family member related to Mr Flanagan.

51. The qualifying floating charge had been entered into on 12 July 2022. It was later registered at Companies House.

52. Questions about its validity were raised at the hearing on 3 April 2023 and thereafter by or on behalf of the Petitioners. Part of the opposition to my making an administration order was directed at the identity of the proposed administrators. It was suggested that at best they were at fault in the manner in which they handled the question of the validity of their appointment and at worst that they were in fact stooges of Mr Flanagan and lacking independence. Various other allegations were made against them. The high point of the accusations in this respect were accusations made by a Mr Edward Magan, who claims to be a creditor of the Company, in a witness statement dated 21 June 2023. I shall return to the various allegations later in this judgment but deal with some of them as I deal with the relevant factual evidence to which they relate.

53. The Administrators had taken Counsel's advice from Mr Anderson of 4 Stone Buildings about the validity of the apparent qualifying floating charge. Mr Magan suggested that the Administrators had in fact relied upon advice from a Mr Orchard with regard to the validity of their appointment. The basis of that belief was not explained in his witness statement where he said he had been made aware of the matter. In court he told me that it was based upon having seen various emails. He asserted that Mr Orchard was Mr Flanagan's advisor and himself involved in "companies that has conducted scams and financial frauds of very material sums". Given the clear evidence of the advice taken by Axiom, these assertions do not cause me to consider that valid criticism can be made of the Administrators' position. Mr Magan also made a number of serious allegations against Mr Flanagan. He then went on to assert that as a result of Mr Andronikou having been appointed by Mr Flanagan, Mr Andronikou's integrity and independence were in question. However, as I understood it, he ultimately accepted that the bare facts that he relied on were consistent with his theories about Mr Andronikou but were equally consistent with Mr Andronikou being independent and acting entirely properly.

54. That professional advice given to the Administrators, by email dated 30 March 2023 sent to the firm of solicitors Axiom Ince Limited trading under the name Axion DWFM, dealt with the question of whether or not the chargeholders had power to appoint administrators over the Company. The opinion expressed, based on the reasoning set out in the email and an analysis of the Debenture and the facts, was that the appointment

could be made notwithstanding the outstanding winding up petition. However, although the advice considered whether or not the charge was enforceable under the Debenture it did not consider in terms the question of any avoidance provisions under the IA 1986 and, in particular, the position under s245 IA 1986 dealing with the validity of floating charges created within a certain period of the onset of insolvency. As far as I can tell on the limited evidence before me the point was not raised by the solicitors or the relevant insolvency practitioners either but I have not seen the full trail of emails and the instructions given to counsel.

55. It was submitted to me that this was an extraordinary failure by the Administrators which I should weigh in the balance in assessing the appropriateness of appointing them as administrators. It seems to me it is a factor of no or minimal weight and, on the limited evidence before me, I cannot criticise the Administrators given that, on the face of things, they took proper professional advice as to the validity of their appointment if made, prior to accepting the same. I should also add that it is not for me to make any findings about those involved in giving or obtaining the professional advice when I have such limited materials before me. I also note that Mr Fennell, who appeared before DDJ Temple on 4 April 2023, originally took the position that the Debenture might in some way be invalidated by the operation of s127 IA 1986 (avoiding dispositions of company property between the date of presentation of a winding up petition and any winding up order being made on that petition) but did not raise s245 IA 1986 (later suggested to be a blindingly obvious point). He suggested that his clients' expectation was that the Administrators should make an application to court to regularise their appointment but that, if they did not, his clients would make such an application. However, shortly afterwards he suggested that his clients would press for a winding up order.

56. As an aside, I should note that the Petitioners do not accept Mr Andronikou's evidence that the advice was commissioned/paid for by the Administrators. In terms the advice defines the qualifying floating chargeholders who made the purported appointment as the "clients". The Petitioners accept that the Administrators saw the advice and relied upon it. It does not seem to me that much turns on whether the advice was directly commissioned and paid for by the QCFHs, or the Company or the Administrators. I accept Mr Andronikou's evidence that the Administrators took the legal advice in question.

57. The question of s245 IA 1986 (among others) was raised by the Petitioners' solicitors on the day immediately after the 4 April hearing. A factual investigation had to be carried out and further legal advice taken by the Administrators. That was received on or about 30 May 2023. Again, as a factor weighing against the appointment of the Administrators by the Court, it was submitted that the Administrators were dilatory in obtaining that advice. I do not agree that I can make that finding on the evidence before me. It is quite clear from the evidence that there are a number of transactions that will have to be investigated with care and that the record keeping within the Company does not seem to be to be to the standard that might be hoped for. Further, it was obviously not in the interests of the Administrators to leave their status uncertain. It cannot be suggested that this was all part of some improper conspiracy. The uncontested evidence is that counsel was instructed on 13 April and that advice was finally received on 24 May 2023. As Mr Andronikou explained in his 3rd witness statement dated 22 June 2023:

> *" it was not until 24 May 2023 that final advice was received, given the complexities around the background to the security it took a period to investigate that. It took several attempts to obtain the relevant information from the qualifying floating charge holders (the "**QFCHs**") which was required in order to provide the advice".*

58. I deal with the facts as they emerged and the submissions made to me by Ms Johnson as to the potential invalidity of the Administrators' purported appointment later in this judgment.

59. The next criticism made of the Administrators revolved around what was said to be unacceptable delay between their receiving advice as to the validity of their appointment on 24 May and the launching of the current application on 9 June 2023. Again, I am unable on the evidence before me to make any such finding. It is clear that there were ongoing discussions between the Petitioners and the Administrators about the status of the latter's appointment. The discussions, as demonstrated by a Strategic Review document that I was shown, clearly included the proposition that the current application would be made by the Petitioners (or one of them) as creditors, there being difficulties in the Administrators making such an application because it was far from clear that they were creditors of the Company or otherwise had standing to make such an application. When proposals broke down, in part because the Petitioners were understood to be asking for (among other things) the payment of their petition debt, the Administrators had to look round for persons to make the application. Further, the application obviously needed time to prepare.

60. Accordingly, on the evidence before me, I am unable to find any valid criticism of the Administrators in relation to the validity of their appointment and what occurred in connection with it and certainly nothing that impugns the appropriateness of appointing them administrators if an administration order is otherwise appropriate.

The grounds of invalidity of the appointment on 3 April 2023

61. The relevant facts appear to be as follows. In or around 2020, the Company borrowed, by way of secured borrowing, a considerable sum from ESF Loans Limited ("ESF" and the "ESF Loan"). By June 2022, the outstanding amount was in the region of £1,099,000. ESF was threatening to foreclose on its security.

62. Mr Flanagan and the Trustees (the "QFCHs") therefore made arrangements to pay off the ESF Loan. A payment (or payments) was made directly to ESF on 1 July 2022. No payments were made to or routed through the Company factually. Further, the arrangement with the QFCHs was not that they had lent sums to the Company. Instead on 12 July 2022, the QFCHs entered into a loan agreement with the holding company of the Company, namely Wilton Group Limited ("WGL"), an Isle of Man incorporated company. Leaving aside a complication that the overall loan was apparently made by the QFCHs severally and in parts, the Loan Agreement provided by Clause 3 as follows:

> "*3.1 The Lenders have from time to time loaned and advanced funds to the Borrower. In consideration of the Lenders not demanding immediate payment of these loans and agreeing to make further loans (at the Lenders' sole and absolute*

> *discretion) the parties have agreed to enter into this agreement with the Lenders*."

63. Among other things the Loan Agreement went on to provide for repayment of the "Loan" by instalments and the payment of interest. Interestingly the details of the Loan set out in Schedule 1 to the loan agreement omit any details of the "Aggregate amount of all Loan Parts".

64. Although it is not clear to me from the documents that I have been referred to, I understand that on the evidence the Administrators consider that the Loan Agreement covers the loan made by the QFCHs by discharging the ESF loan and that that loan was to WGL.

65. The Loan Agreement also provides for the provision of security from various Wilton group companies, including the Company. There was to be a first ranking Debenture from WGL, a composite guarantee from various other members of the Wilton group and a debenture from each guarantor to secure liabilities under the guarantees.

66. On 12 July 2022, the Company entered into a composite guarantee and indemnity to the QFCHs to guarantee the obligations of the borrower, WGL. Also on that day, the Company entered into a debenture agreement as chargor, agreeing to pay on demand to the QFCHs and discharge the "Secured Liabilities" when they become due (the "Debenture"). The secured liabilities were defined in wide terms but in essence cover any liabilities of WGL to the QFCHs, including future liabilities. By the Debenture the Company granted fixed and floating charges and a mortgage over its real property.

67. As I read the documents, the Debenture and the guarantee are both security for the payment of sums and discharge of liabilities owed by WGL to the QFCHs.

68. As of yet, how the payment off of the WGL Loan was accounted for as between WGL and the Company is unclear.

69. The concern as to invalidity of the appointment of the Administrators on 3 April 2023 turns on the enforceability of the qualifying floating charge apparently created by the Debenture and enforceability of the floating charge. I did not understand the analysis below, put forward by Ms Johnson, to be challenged by anyone. Indeed, Mr Fennell's position, as I understood it, was that it was clear that that appointment was invalid and there was no realistic argument to the contrary, on the facts or on the law.

70. Paragraph 16 of Schedule B1 to the IA 1986 provides that:

> "*An administrator may not be appointed under paragraph 14* [dealing with such appointments by a holders of a qualifying floating charge] *while a floating charge on which the appointment relies is not enforceable*".

71. It was common ground before me that if s245 IA 1986 invalidated the relevant floating charge then the appointment on 3 April 2023 could not be valid and could not now be validated by the court. The most that the court might be able to do would be to make a fresh appointment, whether with or without retrospective effect.

72. Section 245 IA 1986 potentially invalidates floating charges created "at a relevant time". It was common ground that that would be within 12 months or, where, as in this case, the charge is created in favour of a person connected with the company (which Mr Flanagan and Ms Hewson were as directors) within two years of the onset of insolvency. The onset of insolvency would be, for present purposes, the date of the appointment of the administrators on 3 April 2023. This condition is therefore met.

73. The operation of the invalidity provisions are set out in s245(2):

> "(*2) Subject as follows, a floating charge on the company's undertaking or property created at a relevant time is invalid except to the extent of the aggregate of-*
>
> *(a) The value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the company at the same time as, or after, the creation of the charge,*
>
> *(b) The amount of so much of that consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the company, and*
>
> *(c) The amount of such interest (if any) as is payable on the amount falling within paragraph (a) or (b) in pursuance of any agreement under which the money was so paid, the goods or services were so supplied or the debt was so discharged or reduced."*

74. The case for invalidity (or, perhaps more accurately, absence of factors validating the charge) is threefold.

75. First, the charge was granted after and not at the same time as, or before, the Company received any benefit (whether the benefit is viewed as being discharge of its debt to EFL or the making of a loan to WGL by such discharge).

76. Secondly, there was no relevant consideration or value given for the charge which fell within the descriptions in either sub-section (a) or (b) such that the loan from the QFCHs or the payment off of the ESF debt could be treated as relevant value. The stated consideration for the charge was the granting of time to WGL to repay a loan or payment to or for the benefit of WGL not the actual loan from the QFCHs to the Company nor any discharge or reduction in any debt of the Company (and see *Manning v Neste* [2023] BCC 271 at paragraph [61] for the clarification that:

> "*Even if the charge was validly created, it is only valid under s.245 to the extent that value was given specifically in respect of the grant of that charge….a charge can be struck down unders.245 on two entirely separate grounds; one being that value is transferred to the grantor prior to the creation of the charge, and the other being that the value transferred was not transferred in consideration for the grant of the charge."*

77. Thirdly, no relevant consideration or value was given to the Company for the floating charge it created. As I have just said, the consideration was the grant of time to WGL to repay loans generally.

78. I am satisfied that there are strong grounds for saying that the floating charge under which the Administrators were appointed is invalid and that therefore their appointment on 3 April 2023 is invalid. I note however that it is unclear from Mr Flanagan's first witness statement whether he disputes this analysis (either as a matter of fact and/or law) though he supports the appointment of the Administrators as administrators by court order. Had I been asked to decide the question of invalidity, I would have had further questions. The first witness statement of Mr Andronikou seems to rely, for the facts that he states regarding the QFCHs and the repayment of the ESF Loan, on the Wilton Group's legal adviser alone. Further, there seems to be some unclarity as to whether the Loan Agreement covers the loan to WGL said to arise from the QFCHs having paid off the ESF Loan. Nevertheless, even if any loan from the QFCHs arising from paying off the ECF Loan gives rise to other obligations on the Company the actual Debenture is clear on its face as to what it is securing, which is liabilities of WGL.

79. I therefore proceed on the basis of the third approach set out by me in *Re A.R.G. (Mansfield Ltd)* [2020] BCC 641 at paragraph [54], that is, in this case, to avoid actually deciding whether the appointment is invalid but to grant relief (if appropriate) on the basis of the "worst case" scenario of invalidity.

Should an administration order now be made? The issues

80. The requirements are that:

(1) The applicant must have standing to make the application;

(2) There must be jurisdiction to make the order, which requires two conditions to be met (see IA 1986 Sch B1 para 11):

a. The Company must be or be likely to become unable to pay its debts on the balance of probabilities;

b. It must be reasonably likely (that is, that there is a real prospect) that the administration order will achieve the purpose of administration set out in IA 1986 Schedule B1 para 3 will be achieved;

(3) As a matter of discretion, it must be appropriate to make the Order.

(a) The Applicant as creditor

81. It is common ground that the Applicant has standing to make the application as a creditor. In this respect, it is not necessary that the debt relied upon is not the subject of a bona fide dispute on substantial grounds (contrast the position on a winding up petition) see e.g. *Hammonds v Pro-Fit USA Ltd* [2007] EWHC 1998; [2008] 2 BCLC 159.

82. The Applicant is in fact a subsidiary of the Company and is itself in administration. It acts in this case by one of its administrators (Mr Peter Kubik of UHY Hacker Young

LLP) on behalf of both of them. It claims to be an actual and contingent creditor. Some measure of the sort of uncertainties that abound are evidenced by the fact that in the winding up proceedings the "head of corporate and legal" of the Company, Mr Theunis Bassage, filed evidence asserting that rather than the Applicant being a creditor it was in fact a debtor of the Company in a sum of over £1.9 million.

83. At various times, different positions have been put forward:

(1) Letter dated 25 January 2022 from the Company to the Applicant confirming an intercompany debt of over £5.2 million owed by the Company to the Applicant;

(2) A record in Money Marketing of an FCA note as at 31.10.21 showing the Company to owe the Applicant over £5.2 million.

(3) Email from auditors of Applicant's accounts dated 27.10.22 asserting as at 30 April 2021 the Applicant owed the Company £910,512;

(4) Email from Mr Flanagan (director of both companies) saying that as at 14 July 2022 it was agreed that the Company owed the Applicant £241,921.47;

(5) Administration application in relation to the Company issued by the directors (but then withdrawn) included in the evidence (dated 19 July 2022) a cash flow statement showing future repayments by the Company to the Applicant of £241,000 over a 7 week period (the payments were not in fact made).

84. As Mr Kubik put it in his witness statement of 14 December 2022 made in the winding up proceedings:

> "*14. On this basis, without the full cooperation from AF and based on our internal investigation of the books and records, I believe there to be a debt due from Wilton to the Company. We have had no clear explanation as to how a debt of £5,216,522 owed from Wilton to the Company has now switched so that the Company now owe Wilton the Purported Debt which equates to a total swing of £7,194,177.*
>
> *15. Whilst Wilton have claimed that certain charges had not been accounted for and have since sought to invoice the Company for these services, they do not account for the total swing of the inter-company debt as detailed in paragraph 14 above nor have they provided an explanation for all of the purported charges under the invoices.*
>
> *…*
>
> *17. Given that a debt of £241,921.47 was confirmed as due and payable from Wilton to the Company only 10 days prior to the date of administration, without any further explanation, we believe a debt remains payable because all post-appointment charges would have had to have been approved by the Joint Administrators, which they have not been."*

85. I am also satisfied that there is a good case for saying that the applicant is a contingent creditor for the reasons given by Mr Kubik in his 4th witness statement, paragraph 17:

> "17. *The services the Company provides to HPL* [the Applicant] *are essential in order to manage the orderly transfer out and wind down of the business, and should the Company be immediately placed into liquidation, and thereby causing detriment to HPL clients, this will significantly increase the risk of Financial Ombudsman Service ("**FOS**") claims. If such claims were to be upheld in part or wholly due to the failure of the Company, then this will increase HPL's creditor claim against the Company for failing to adhere to agreed service lines. The FOS levies a fee of £750 per individual FOS claim, and given HPL has 16,646 SIPP clients HPL would be exposed to a potential liability of £12,484,500."*

86. As regards this last point, I make two further points. First, I reject the submission of Mr Fennell that there is wholly inadequate evidence of any contract let alone the precise contractual terms between the Company and the applicant with regard to the provision of services by the former to the latter and that the matter is little more than assertion that should, in effect be ignored. In my judgment it is clear that services have been provided for some time, there must be contractual terms (implied if nothing else) and there is a real prospect that the Company would be liable to the Applicant if it failed to continue to provide such services abruptly and that there is a real prospect that the envisaged liability would be passed onto the Company. Secondly, assuming such a liability as a contingent debt and at this stage the value of the debt may be less than £12.4 million but it is still, on any view, very significant.

(b) insolvency

87. It was common ground before me that the Company is insolvent.

88. The balance sheet of the Company as shown by its accounts at the year end 30 April 2020 show net liabilities of over £4.7 million. The position since then is however somewhat uncertain. I have already referred to apparent uncertainties regards the identity of creditors and the quantum of their claims. This means that the estimated outcome statement on an administration and on liquidation, in either case showing the Company to be net asset solvent by, at the least, over £1.3 million, is far from certain. It does not include Mr Augousti's claim other than as "uncertain" nor any potential claim by the Applicant. I suspect the Company is insolvent on a net asset basis but cannot be satisfied of that on the evidence before me.

89. More tellingly, the court has already found that the defence of the winding up petition is not persuasive and there was only £31,535.07 in the Company's bank account as at 12 June 2023 to pay such debts. Furthermore, albeit in the capacity of QCFHs, the directors purportedly put the Company into administration and attempted to do so as directors prior to the appointment on 3 April 2023. Although apparently Mr Flanagan challenges all or nearly all of the debts relied upon by persons appearing before me who claim to be creditors of the Company there is no money to defend claims brought by them.

90. I am satisfied, on the balance of probabilities and the evidence before me, that the Company is insolvent, on at least a cash flow basis.

(c) achievement of purpose of administration

91. Of the three limbed purpose of administration set out in paragraph 3 IA 1986 Sch B1, I am satisfied that there is a real prospect that the administration will achieve a better result for the Company's creditors as a whole than would be likely if the Company were wound up (without first being in administration) and (failing that) enable property to be realised in order to make distributions to one or more secured or preferential creditors.

92. The proposed strategy is one of the Company continuing to trade for a period, reducing the risk of the claims from the Applicant that I have referred to, compared with trading abruptly ceasing on a liquidation. The precise period of trading is uncertain. A forward looking estimate has been prepared which envisages a trading loss being incurred. However, even taking that trading loss into account and taking into account the higher professional fees on an administration, compared with a liquidation, the estimated outcome statement envisages an improved financial outcome at the end of the day, an administration achieving a net asset realisation figure after payment of debts of some £679,816 or so more than on a liquidation. Even if the creditors turn out to have much larger claims, that is still the measure of the extra asset realisations that would be made on an administration compared with a winding up.

93. There is also a very real benefit of administration over liquidation in terms of timing. First, the Administrators have carried out a certain amount of work and have a head start on any newly appointed officeholders. Secondly, there is a real issue as to delay if the liquidation route is followed. I have already adverted to the need for a possible further hearing to resolve the issue of disputed debt. In addition, absent a Secretary of State's appointment, there is likely to be a hiatus while arrangements are put in place for creditors to vote on the issue. As has already been seen, creditors voting potentially raises all sorts of issues as to the identity and quantum of individual creditors which suggests a very real possibility of further delay.

94. Points were taken in evidence by the Petitioners that were, rightly, not taken further by Mr Fennell. First, it was suggested that a trading loss was detrimental. However, this failed to take into account the effect such trading would have on asset realisations on a going concern (administration) basis rather than on a break-up basis (liquidation). The effect was particularly marked as regards debt recovery and realisation of value for work in progress as well as the potential sale of the business. Secondly, it had been suggested that the potential trading loss and the extra costs and expenses of professionals had not been factored into the figures but it was clear that they had been.

95. There were other points that Mr Fennell did maintain, however. First, the Applicant had indicated that its administrators considered the continued trading (and the provision of essential services by the Company to the Applicant) to be so much in the interests of the pensioners for whom they had responsibility, that it was appropriate a charge should be levied on such pensioners to fund the trading deficit. To that end their intention was to make an application to the court in that connection, presumably to get some form of necessary or desirable sanction to that course. I did not have details of such application and cannot evaluate how likely it is to succeed but I consider that there is a real prospect of both such events occurring, given the views expressed by the officeholder of the Applicant. If they materialise then that would further increase the realisations compared with a liquidation. Mr Fennell criticised the absence of detailed evidence about all of this but, as I shall explain, I consider that that criticism (which was made in general terms about a number of matters in the evidence) goes too far.

96. Secondly, he asserted that the trading loss might be greater than anticipated as the first month's trading post the purported appointment on 3 April had not realised receipts in the sums anticipated but only about half of such receipts. This arose from clarification to a request from me as to whether any of the proposed trading figures (shown on a month by month basis) were actual as opposed to forecast. The explanation then given in answer to Mr Fennell was that the actual receipts were not as predicted because money had been held back by the Applicant, pending clarification, as a result of this hearing, as to the insolvency regime that the Company was in and the identity of the relevant officeholders.

97. Similarly, as regards the submission of the Applicant that an administration with continued trading might avoid the contingent costs of some £12 million or so (in terms of increased creditors in that sum) that I have outlined earlier, Mr Fennell criticised the absence of detail in the evidence as to whether there was a contractual relationship between the Applicant and the Company and what its terms and conditions were and what legal advice had been given as to the prospects of any claim and the quantum of the same. As I have said, I am satisfied that there is a real prospect of such a claim arising on liquidation. I consider that it is wrong to criticise the level of detail in the evidence that Mr Fennell seemed to suggest was necessary.

98. Mr Fennell's main point however was that there was a major advantage to a liquidation over an administration. That was the availability of the remedy under section 127 IA 1986 in avoiding dispositions of company property between the date of presentation of a winding up petition and a winding up order as compared with the position in an administration. As regards this he asserted that it was relevant to the following transactions:

(1) The fixed charge in the Debenture (though he only raised this for the first time in oral argument);

(2) Certain share transfers apparently made;

(3) Unknown transactions.

99. In oral argument, for the first time Mr Fennell raised an issue that the fixed charge contained in the Debenture would fall foul of s127 IA 1986, accepting that on his own submission the floating charge was clearly invalid under s245 IA 1986. The importance of the point was that the estimated outcome statement showed an estimated value of £3million value of subsidiaries which would on the face of things be caught by the fixed charge. Depending on that value and depending on what creditor claims emerged, the fixed charge might be a significant matter affecting creditors as a whole.

100. The other two identified transactions were transfers of a share in Guinness Mahon Limited and shares in One Planet Capital Limited.

101. I accept that s127 IA 1986 can in certain circumstances provide a relatively straightforward remedy which has advantages over, for example, other transaction avoidance provisions of the IA 1986 (such as ss238, 239 and 423 IA 1986) or claims for breach of director's duties. Further, the availability of s127 can be a weighty factor pointing to a benefit of liquidation over administration. I was referred to, among other cases, *Re UK Steelfixers Ltd* [2012] EWHC 2409 and *Re Brown Bear Foods* [2014] EWHC

1132 (Ch). However, in this case Mr Fennell accepted that a claim under s127 in this case was not a "slam dunk" and that there were a number of other claims potentially available (assuming the transactions were properly challengeable) to the Administrators in respect of the identified transactions. I do not regard the availability of s127 IA 1986 in liquidation on the facts of this case to demonstrate that an administration would be a significantly worse outcome for creditors than a liquidation or that there is a real and sufficient prospect that it will be, given the other benefits of administration.

102. As regards unknown transactions, Mr Fennell asserted that there may be some to which s127 IA 1986 would apply and that the Administrators were to be criticised for not by now having identified transactions which may be subject to attack. In that respect he pointed to a request for bank statements from the Company's bankers in May and suggested that this in particular was also to be criticised as being made very late. I do not accept that it is fair to make any criticism of the Administrators regarding the bank statements given I do not know the full circumstances of what has been going on. The statements are apparently still not available so it seems unlikely that had the request been earlier it would have made any difference to the position before me.

103. As regards the substantive point of the benefit of liquidation over administration, s127 IA 1986 could always be prayed in aid as regards unknown transactions and it seems to me that this point has little or no weight as regards such matters.

104. I have referred to a number of respects in which Mr Fennell made criticism for the absence of detailed information. These points were very much part of a more general submission that he made which was that the Applicant had failed to provide sufficient detailed evidence to the Court to enable the Court to conclude that it was appropriate to make an administration order. Indeed, in his skeleton argument he went so far as to say that the evidence fell far short of the requirement that it be accurate, true and reliable.

105. That there is an obligation upon an applicant presenting an administration application to provide "reliable" evidence in the sense discussed by HHJ Barker in *Re Bowen Travel Limited* [2012] EWHC 3405 was not in dispute. As Judge Barker said,

> *"When the court is asked to exercise its powers under para.13 of Sch.B1 to the Insolvency Act 1986 by making an administrator order, it is, in my judgment, essential that the evidence presented to the court is reliable. Implicit in the noun "reliable" in this context is not only that it is accurate evidence and true insofar as it is factual, but also that (1) a clear account is given of all potentially relevant facts and circumstances, and (2) where explanators are given or judgments, estimates or opinions are stated (a) they should be supported by the underlying material, and not contradicted by it, and (b) they should also be credible in the sense of being realistically likely to be true. Such a requirement should be neither onerous nor unreasonable. It requires no more than that an applicant, who, as a director, should know what has been going on at the company, tells the court the informed truth and does not attempt to mislead, including by omission."*

106. However, what is required to meet this standard depends on the circumstances. The expectations of the product of a director (assuming them to have been in office for a sufficient period), as identified by Judge Barker, are likely to be very different to the product of an administrator of a subsidiary company. Further, so far as the relevant

opinion and views regarding administration are likely to be those of the proposed administrators, what is expected of them, in circumstances where they have had no prior dealings the company and have purportedly been in office for only 3 months, during which time resources have had to be devoted to the issue of the validity of their appointment and how to rectify any defect, is also bound to be different.

107. Despite what Mr Fennell said in his written submissions I did not identify any alleged absence of truth. Similarly, I did not find the evidence put forward to lack reliability. Indeed, the majority of inaccuracies he identified in his skeleton argument (alleged inaccuracies in the estimated outcome statement) were a result of misunderstandings on the part of the Petitioners: the estimated outcome statement correctly included the relevant items in question.

108. Further the suggestion that there was no explanation as to why a trading loss should be permitted (as being other than prejudicial to creditors) was itself surprising. As the estimated outcome statement showed there were much larger overall recoveries/realisations anticipated as flowing from the administration which exceed the trading losses anticipated (even if not funded by the Applicant as planned).

109. It was also submitted that Mr Kubik's evidence had changed on the question of funding the loss from one where the funding from the Applicant was agreed and would take place to one where it was said to be subject to a court order. However, the obtaining of a court order had been set out in Mr Kubik's first witness statement, where he also said:

> "*Please note that I only propose to fund the Shortfall should this be approved by the Court as part of the Part 8 claim referred to above."*

110. So far as accuracy is concerned, it either identified or was clear where there was uncertainty. For example, there cannot be "accurate" estimates of future. realisations. Further, it is asking too much to expect the evidence to set out all the underlying data and assumptions underlying the estimated outcome statement. Similarly, it seems to me to be wholly unrealistic to assert, as Mr Fennell did, that the Administrators should have been in a position by mid-June to have identified all possible transactions vulnerable to s127 IA 1986 and to have reached a conclusion as to whether the claim was likely to succeed or at the least be more likely to succeed than any claim mounted in the administration.

111. In response to a question from me as to whether he was suggesting that something meeting the standards and content of a prospectus on a public offering was required, he replied in the negative but suggested that something in the nature of what used to be provided by way of what was called a "Rule 2.2. report" (after the then provision of the Insolvency Rules 1986 which required such a report) was required. The court has however long ago moved away from such a requirement.

112. At the end of the day I had the firm impression that the Petitioners' approach was not to identify genuine issues but rather to seek to find any weaknesses it could in the Applicant's evidence and to exploit them. That view is reached, in part, taking into account the following. First, the provision of template witness statements to alleged "supporting creditors" who made allegations of serious impropriety against the Administrators and/or Mr Flanagan which the Petitioners did not seem prepared to make themselves (indeed they originally said they would make the current application)

but wished to ride on the back of. Secondly, the behaviour of the Petitioners in initially suggesting that they would make the current application (clearly having no issue with the Administrators being appointed), a position that only changed on or about 6 June, but which then moved to one of out and out opposition. This change resulting from, among other things, a refusal to reach agreement that the petition debts would be paid as a priority over other creditors. Then, as I have explained, as I started giving judgment, it was announced that the Petitioners had reached a "deal" and no longer opposed the application or the relief sought in its full form (other than costs). I do not know what the "deal" was but if the concerns of the Petitioners were genuine I cannot see how they would be met by any form of "deal".

113. At the end of the day I consider that the evidence in support of the Application has the necessary quality to pass the test conveniently set out by HH Judge Barker.

The identity of any administrators

114. At the end of the day, this appeared to be the actual concern underlying many of the creditors' positions of support for the Petitioners. The Petitioners were not however able to put forward any proposed administrators because the insolvency practitioners that they wish to see appointed as liquidators are not able to say that they consider that here is a real prospect of the administration achieving its statutory purpose.

115. As regards Mr Andronikou, I have already said why I do not consider that the matters raised against him are such as to make it inappropriate to appoint him. Much of the concern is based on the fact that he and the other two Administrators were originally appointed by Mr Flanagan (and others) as trustees under the Debenture but the mere fact of such appointment does not show bias, incompetence or that they are Mr Flanagan's stooges.

116. A point was raised about a regulatory sanction imposed against Mr Andronikou many years ago but in my judgment that stale matter does not impinge upon his suitability now to be appointed administrator.

117. It was suggested on behalf of the Petitioners that persons should be appointed to "investigate" Mr Andronikou's conduct of the purported administration. As Ms Johnson correctly observed, there is, on the face of it, nothing to "investigate".

118. Others of the supporting creditors, invited other insolvency practitioners to be appointed as "policemen" to ensure that the Administrators, once appointed, did their job and did it properly. If I felt there was a doubt about this I would simply not appoint the Administrators. On the evidence, I do not consider there is a question in this respect and therefore the extra costs of extra insolvency practitioners being appointed cannot be justified.

Retrospective Effect of order?

119. The Administrators have acted as administrators since April 2023. In that period they have entered into various commitments as administrators. These include arrangements with landlords and employees. The validity of those arrangements should not be put in doubt.

120. The Administrators have also apparently taken forward the administration and (for example) made arrangements with the Applicant that have been acted on to date in the Company's continued trading.

121. If there are actions or costs incurred by the Administrators in this period which are considered by others to have been unreasonably or improperly incurred then they should be challenged in due course on those grounds rather than being invalidated by the sidewind of the original appointment being, or possibly being, invalid.

122. Accordingly, I make the order with retrospective effect, as asked.