

In the Supreme Court of St. Helena

Citation: SHSC 567/2019 & 568/2019

Civil

Directions on Execution

Bank of St Helena

-v-

(1) V2 Taxi & Tour Agency Limited

&

(2) Lucille Miriam Jane Johnson

&

(3) Patrick Rex Henry

Ruling dated 19th April 2022

The Chief Justice Rupert Jones

1. This is my judgment on the application for directions by Derek Pedley, Court Appointed Administrator and Liquidator of V2 Taxi and Tour Agency Limited ('the First Defendant' or 'V2 Taxi & Tours') and V2 Paradise Limited ('V2 Paradise') as to the application of proceeds of sale of various assets held in the name of the two companies and in the names of the Lucille Johnson (the Second Defendant) and Patrick Henry (the Third Defendant).
2. It follows an oral hearing which took place on 18 March 2022 over which I presided by remote video connection. Mr Pedley, the liquidator, appeared in person as did the Second and Third Defendants, Ms Johnson and Mr Henry. The Bank of St Helena ('the Plaintiff' or 'BOSH') was represented by Ms Ivy Ellick, a lay advocate, and Ms Helen Scott (a consultant to the Public Solicitor's Office).
3. I have also considered further documents sent on 24 March 2022 after the hearing further to an agreed direction. These relate to the sale by auction of the two companies' assets.
4. On 25 March 2022 I also directed that I would be assisted by written submissions from the parties on two further issues which I address below. Written submissions from the liquidator for the first defendant and Plaintiff BOSH were provided in an email from Helen Scott for the Public Solicitor on 31 March 2022. They also provided an Excel spreadsheet of the

assets sold and to be distributed with agreed gross values and net sale proceeds. I approve that spreadsheet and append it as Annex 1 to this judgment.

5. The Second and Third Defendants provided a statement in reply dated 9 April 2022.
6. I am grateful to each of the parties for their written and oral submissions.
7. I begin this judgment by repeating that which I said during the course of the hearing and was expressed by the former Chief Justice in his earlier ruling dated 14 December 2020. I have a great deal of sympathy for the circumstances in which Ms Johnson and Mr Henry, have found themselves. They started two businesses (V2 Taxi & Tours and V2 Paradise) in good faith.
8. Due to unanticipated and difficult financial circumstances, and exacerbated by the Covid Pandemic, those businesses failed and became insolvent. The businesses were placed into liquidation, a liquidator was appointed and the assets of the businesses and their personal assets (provided as security and by virtue of guarantee to the Bank) have now been sold. The Court is not here to determine blame nor morality regarding the reasons for the failure of the businesses nor whether the loans should have been made or accepted by the parties in the first place. I have no doubt that this set of court proceedings, together with the significant personal financial impact, will have caused Ms Johnson and Mr Henry a high degree of stress.
9. Nonetheless, I am required to make determinations and give directions on the liquidator's application regarding distribution of the sale proceeds.

The Background

10. I adopt much of the background which was helpfully set out in the position statement on behalf of BOSH filed on 25 February 2022.
Chronology in relation to Plaintiff or Claim 567/2019
11. On 3 November 2016, 15 September 2017 and 8 October 2018 the Plaintiff BOSH and the First Defendant (V2 Taxi) entered into business loans and overdraft agreements supported by Personal Guarantees of the Second and Third Defendants dated 7 August 2017.
12. These business loans and overdraft agreements were secured by legal charge dated 22 April 2016 registered against Millfield - Longwood North Parcel 40 which was a property and land in the name of the Second Defendant, Mr Henry. Additional security was held over a number of vehicles which were purchased from the loans.
13. The amount loaned was £24,000 and £78,303 repayable in equal instalments over a period of 5 years.

14. The amount of the overdraft was £10,000, repayable over a period of 1 year, expired 14 September 2019.
15. Prior to the issue of proceedings, under the terms of the mortgage the additional payment of £30,587.46 became due, arising from unauthorised overdraft comprising solely mortgage and interest repayment arrears. This figure includes the original approved overdraft of £10,000. The approved overdraft was for a fixed period of 1 year only. The one-year fixed term expired which resulted in the £10,000 overdraft becoming unauthorised. There was an additional £20,587.46 unauthorised overdraft.
16. A Complaint and Particulars of claim were issued dated 8 November 2019 in respect of the total amount outstanding under the regulated loan agreement secured by the mortgage in the sum of £84,726.34 inclusive of interest, arrears, legal and administration charges as at 31 October 2019.
17. A writ of summons dated 11 November 2019 was issued and served upon each of the Defendants.

Plaint or Claim 568/2019

18. On 4 August 2017, 8 September 2017 and 8 October 2018 the Plaintiff and the First Defendant entered into business loan and overdraft agreements of the above premises supported by Personal Guarantees of the Second and Third Defendants dated 7 August 2017. These business loan and overdraft agreements were secured by legal charge dated 8 August 2017 registered against Cleugh's Plain - Scotland Parcel 393 and Pub Paradise - Longwood South Parcel 315 (both of which land and properties were registered in the name of the Second Defendant, Ms Johnson).
19. The amount loaned was £336,659 and £10,189 repayable in equal instalments over a period of 10 years.
20. The amount of the overdraft was £15,000, repayable over a period of 1 year, expired 03 October 2019. Prior to the issue of proceedings, under the terms of the mortgage the additional payment of £41,079.97 became due, arising from unauthorised overdraft comprising solely mortgage and interest repayment arrears. This figure includes the original approved overdraft of £15,000. The approved overdraft was for a fixed period of 1 year only. The one-year fixed term expired which resulted in the £15,000 overdraft becoming unauthorised. There was an additional £26,079.97 unauthorised overdraft.
21. A Complaint and Particulars of claim were issued dated 8 November 2019 in respect of the total amount outstanding under the regulated loan agreement secured by the mortgage in the sum of £356,383.42 inclusive of interest, arrears, legal and administration charges as at 31 October 2019.
22. A writ of summons dated 11 November 2019 was issued and served upon each of the three Defendants.

Ownership of properties

23. There are four relevant properties in respect of the two Complaints / Claims. They are located and registered in the names of the Second or Third Defendants as follows:
 - a. Hunts Bank/Gordon's Post – Francis Plain Parcel 286 – Patrick Rex Henry;
 - b. Millfield – Longwood North Parcel 40 – Patrick Rex Henry;

- c. Cleugh's Plain Scotland Parcel 393 – Lucille Miriam Jane Johnson; and
- d. Pub Paradise – Longwood South Parcel 315 – Lucille Miriam Jane Johnson.

24. Three of the properties (b., c. & d.) were used as security under the mortgages to the First Defendant with personal guarantees given by the Second and Third Defendants. BOSH registered a charge in respect of its interest of each of these three properties and had a secured interest in respect of the loans and overdrafts it had made.

Date of Agreement	Business Name	Loan Amount (£)	Security
03 Nov 2016	V2 Taxi Partners (because V2 Taxi & Tour Agency did not exist at that time)	24,000	Property b. Millfield - Longwood North Parcel 40
15 Sept 2017	V2 Taxi & Tour Agency Ltd	78,303	Property b. Millfield - Longwood North Parcel 40 All vehicles currently owned and being purchased from loan funds
04 Aug 2017	V2 Taxi & Tour Agency Ltd (because V2 Paradise did not exist at that time)	336,659	Property c. Cleugh's Plain - Scotland Parcel 393 Property d. Pub Paradise - Longwood South Parcel 315

The court proceedings

25. The two Plaintiffs or claims were initially heard by Chief Justice Ekins on 27 November 2019. Upon agreement by the Defendants to a minimum monthly repayment of £3,000 together with a voluntary sale of the secured property at Cleugh's Plain, St Helena, directions in respect of the claim were adjourned.
26. A sale of the Cleugh's Plain property did not complete and the Defendants failed to pay any money under the terms of their earlier undertaking. The Defendants restored the claim and Chief Justice Ekins made the following directions on 9 July 2020:
- 1. The Defendant to file a full defence no later than 21 August 2020*
 - 2. Discovery and inspection by the parties no later than 7 October 2020*
 - 3. Any witness statements upon which the parties wish to rely to be filed and served by 31 October 2020*
 - 4. The matter to be listed for hearing at the next Supreme Court session with a time estimate of half a day.*
27. In the absence of a defence being filed, on 27 October 2020 Chief Justice Ekins entered default judgment, the full amount to be assessed. The Order was issued in the name of V2 Taxi and Tours Agency Ltd as First Defendant and the Second and Third Defendants in their personal capacity under both claims 567/2019 and 568/2019. This was the correct form of judgment and Order.
28. The Managing Director of the Plaintiff Company, Mrs Josephine George filed and served affidavit sworn 4 November 2020 setting the total claim at £461,716.27
29. The Defendants applied to set aside judgment and Chief Justice Ekins made an order on 6 November 2020 adjourning the application to allow the Defendants to file a draft defence and to raise any objection to the figure for the total indebtedness. The Order was issued in the name of V2 Taxi and Tours Agency Ltd as First Defendant and the Second and Third Defendants in their personal capacity under both claims 567/2019 and 568/2019.
30. On 14 December 2020 Chief Justice Ekins made a Ruling and Order in respect of the application to set aside the default judgment and in respect of the final judgment sum. He entered judgment in the sum of £461,716.27 stating:
- In the circumstances I see no basis for permitting the Defendants to defend any part of the Plaintiff's claim. I confirm that judgement is entered in the amount of the claim as calculated by Ms. George in her affidavit of 4th November 2020, namely £460,755.27. for the avoidance of doubt the Defendant's application to set aside judgement is dismissed.*
31. I accept BOSH's submission that the Ruling erroneously lists the Defendants under claims 567/2019 and 568/2019 as V2 Paradise Taxi and Tours Agency Ltd and V2 Paradise Ltd and the Second and Third Defendants in their personal capacity. V2 Paradise Ltd had never been a party to the claim. The Ruling should have listed the only three Defendants as (1) V2 Taxi & Tour Agency Limited (2) Lucille Miriam Jane Johnson & (3) Patrick Rex Henry.

32. On 14 April 2021 an amended application was made by the Plaintiff for the enforcement of the judgment debt of £451,802.67 (the sale of some vehicles which were held as security had reduced the original judgment amount) pursuant to section 31 of the Civil Procedure Ordinance 1968. Further to the Ruling of 14 December 2020 the amended application erroneously included V2 Paradise Limited, listing the Defendants *as Lucille Miriam Jane Johnson & Patrick Rex Henry Trading As V2 Taxi & Tour Agency Limited, Trading As V2 Paradise Limited.*

33. On 28 April 2021 Chief Justice Ekins made further order providing for the liquidation and dissolution of the companies V2 Taxi and Tour Agency Limited and V2 Paradise Ltd and further ordered:

10. The sale of the Respondent Companies and of their respective assets shall take priority in diminishing and/or extinguishing the judgement debt; any balance thereafter outstanding shall be diminished or satisfied out of the sale of the personal property, both real and otherwise, belonging to LJ and PH;

34. The Order heading separated case number 567/2019 and 568/2019, erroneously listing the Defendant under case number 568/2019 as V2 Paradise Limited. I accept the Plaintiff's submission that the first Defendant under both cases is and has always been V2 Taxi and Tours Agency Ltd. All Rulings and Orders from 28 April 2021 to date have utilised the same, incorrect heading. The application of 14 April 2021 and the Orders under that application should have made no reference to V2 Pub Paradise Ltd.

35. Nonetheless I am satisfied that the Order liquidating V2 Paradise limited (as being insolvent) and additionally appointing Mr Pedley as liquidator over that the assets of that company was lawful and continues in effect. I explain my reasons below.

Earlier Rulings and Orders to be amended

36. The Second and Third Defendants gave personal guarantees and indemnities together with offering their personal real property as security for loans to the company V2 Taxi & Tour Agency Ltd. I have reviewed the copies of those personal guarantee and indemnities to satisfy myself of the same.

37. I am therefore satisfied, as the Plaintiff BOSH submits, that:

- a. The Plaint / Claims have been issued against the correct Defendants.
- b. Relevant orders, including judgment and enforcement have been made against the correct three Defendants, albeit that the headings to various orders and Ruling have erroneously at times referred to an incorrect Defendant, being V2 Paradise Limited.
- c. The Court has the power to amend this error under s.88 Civil Procedure Ordinance.

Amendment of judgments or orders

88. Clerical or arithmetical mistakes in judgments or orders, or errors arising in them from any accidental slip or omission, may at any time be corrected by the court either on its own initiative or on the application of any of the parties.

In the case of *IC v RC* [2020] ALL ER (D) 74 (Nov) the court held that a slip rule amendment can be made at any stage to enable the Court to properly reflect what was intended and to enable a fair resolution of proceedings consistent with the interests of justice.

- d. There is no prejudice to the Defendants if the Orders are amended to reflect the correct First Defendant as V2 Taxi & Tour Agency Ltd. The Defendants were always aware that the proceedings had been issued against V2 Taxi & Tour Agency Ltd, the loans had been taken by V2 Taxi & Tour Agency Ltd, with security, guarantees and indemnities provided by the Second and Third Defendants. The Defendants have always been liable for repayment of the loans under the security offered and/or personal guarantees.
- e. These amendments do not affect the validity of the order liquidating V2 Paradise Ltd and appointing Mr Pedley as liquidator over the assets of that company.

The liquidator's application for directions

38. As set out above, on 28 April 2021 Chief Justice Ekins appointed Derek Pedley as liquidator and receiver. The judgement ordered all of V2 Taxi and Tour Agency Limited and V2 Paradise Limited assets to be sold to repay the debtors along with real and personal assets if the debt could not be discharged on both companies.
39. The three properties (Millfield, Cleughs Plain and Hunts Bank) were sold by the liquidator by auction on 11 December 2021. The fourth property (Pub Paradise) is yet to be sold but an agreement for sale has been reached and the sale is likely to proceed soon. Two vehicles held as security were sold and the net proceeds of sale applied towards repayment of the mortgages in November 2020. The remaining vehicles held as security were sold on various other dates and the proceeds of sale are held on trust by the Liquidator.
40. The assets in question are set out in the spreadsheet at Annex 1.
41. The liquidator applied to Court for directions as to the distribution of the sale proceeds.

The sale proceeds of the property/ land owned by the second and third defendants

42. On the 07 August 2017 V2 Taxi and Tour Agency Limited entered a loan with the Bank of St. Helena for £328,850.00 for the purpose of purchasing and renovating Pub Paradise (recorded at Land Registry as Longwood South 315) with Mrs Lucille Johnson and Mr Patrick Henry providing personal guarantees. A charge was entered over that property along with a charge over a residential property recorded at Land Registry as Cleugh's Plain Scotland 393, both properties owned by Lucille Johnson.

43. On 08 September 2017 V2 Taxi and Tour Agency Limited entered into an additional loan agreement for £10,189.00 for additional funding to renovate Pub Paradise with Mrs Lucille Johnson and Mr Patrick Henry providing personal guarantees.
44. A further loan for £76,000.00 was entered into by V2 Taxi and Tour Agency Ltd for the purpose of increasing the taxi fleet and purchase of spare parts and a charge was placed over the property recorded at Longwood North Parcel 40 owned by Patrick Henry.
45. A further loan facility was entered into on 08 October 2018 for an overdraft of £15,000.00 with V2 Taxi and Tour Agency Limited with Mrs Lucille Johnson and Mr Patrick Henry providing personal guarantees.
46. On 11 December 2021 the four properties owned by the directors of the First Defendant (the Second and Third Defendants) were offered for sale by auction.
47. The three properties, Millfield, Cleughs Plain and Hunts Bank sold at the auction and raised £242,880.00 after fees but before disbursements. The final property, Pub Paradise, was sold by private treaty after the auction after it failed to receive an offer on the day for £144,000 after selling fees but before disbursements. The precise, accurate and updated figures for these properties are set out in the spreadsheet at Annex 1. I approve these sales and the deductions for costs of sale.
48. In his initial application the liquidator asked the court to determine if the four properties form part of the assets of the companies in liquidation as the proprietorship register at Land Registry records the directors as the sole owners for each property. Furthermore, the properties are not recorded on either of the balance sheets of the companies.
49. It was contended on behalf of the BOSH that three of the properties (Millfield, Cleugh's Plain and Pub Paradise) were held as security for the indebtedness, as such ownership is not relevant. In the alternative, the owners of the properties have provided personal guarantees in support of the loans and overdraft facilities. All funds therefore are said to be lawfully due to the BOSH as preferred and priority creditor. It was contended that the proceeds of sale of the fourth property (Hunts Bank/Gordon's Post), whilst not registered security, should be applied to the indebtedness of the BOSH under the personal guarantee provided by the Third Defendant.
50. After the hearing the bank and liquidator filed post-hearing written submissions in an email dated 31 March 2022. By this time they had narrowed the issues in respect of the sale proceeds of the properties. The liquidator accepted that the proceeds of all three properties where BOSH held or hold charges (Millfield, Cleughs Plain and Pub Paradise as set out in Annex 1 as 'secured properties') should be applied to its debt. These amount to a net sales value of £300,480.00
51. I accept the agreed position of the parties and the submissions made on behalf of BOSH – it held a secured interest in three properties despite them being in the name of the Second and Third Defendants rather than of the First Defendant company. In the alternative, the

Second and Third Defendants, as owners of the properties, have provided personal guarantees in support of the loans and overdraft facilities.

52. Even though the properties did not form part of the asset or property of the First Defendant company, the legal charges and personal guarantees in respect of the properties are valid and can be used to discharge the First Defendant's debts to the Bank of St. Helena. For the reasons set out above, the security of the loan agreements are all in the sole name of V2 Taxi Tours Limited. It is of no consequence that they have not been novated to V2 Paradise Limited.
53. The only remaining issue between the liquidator and BOSH is in respect of the fourth property, (Hunts Bank/Gordon's Post Francis Plain Parcel 286). The sale proceeds are £90,000 less costs of sale at 4% and mortgage of £17,481.90.
54. The key question of the Liquidator is whether this amount can be applied to the debt of the First Defendant's V2 Taxi Tours to BOSH. The liquidator points out that on BOSH's books it states '-£368000 @Pub Paradise' (ie. V2 Paradise Limited). The response of BOSH is that internal administrative records do not override the primary documents - facilities letters which are all in the name of V2 Taxi & Tours Ltd and not V2 Pub Paradise, therefore there is a lawful personal guarantee from Mr Henry to allow net proceeds of sale of Hunts Bank to be applied to the judgment debt.
55. Again, I accept the submissions made on behalf of BOSH. BOSH held a personal guarantee from the Third Defendant in respect of the loan it made to the First Defendant company (V2 Taxi & Tours Ltd). Even though the Plaintiff BOSH holds no secured interest or charge over this property, it is entitled to enforce its guarantee provided by the Third Defendant. The property was not an asset of the First Defendant company against which there would be competing unsecured creditors entitled to make a claim. It was an asset of the Third Defendant personally against which the remaining unsecured creditors of the First Defendant (V2 Taxi & Tours Ltd) had no claim because they do not hold guarantees or other interests in respect of it. The sale proceeds should be applied to BOSH in respect of the First Defendant's debt.
56. I am satisfied that, once obtained, the net proceeds of sale (estimated to be £144,000) should be applied to the First Defendant's indebtedness to BOSH. This property is held as security to the BOSH by registered charge in respect of BOSH's loan to the First Defendant, V2 Taxi.
57. Therefore, I am satisfied that the net sale proceeds of all four properties - the three properties already sold and the sale yet to be completed and as described in Annex 1 -should be applied in full to the First Defendant's indebtedness to BOSH.
 - a. Hunts Bank/Gordon's Post – Francis Plain Parcel 286 – in the name of Patrick Rex Henry – the proceeds of sale are due to BOSH under personal guarantee from Patrick Rex Henry given in respect of BOSH's loan to V2 Taxi.

b. Millfield – Longwood North Parcel 40 – in the name of Patrick Rex Henry – the proceeds of sale are due to BOSH as the property was held as security to BOSH by registered charge in respect of BOSH’s loan to V2 Taxi.

c. Cleugh’s Plain Scotland Parcel 393 – in the name of Lucille Miriam Jane Johnson - the proceeds of sale are due to BOSH as the property was held as security to BOSH by registered charge in respect of BOSH’s loan to V2 Taxi.

d. Pub Paradise, Longwood South Parcel 315 – in the name of Lucille Miriam Jane Johnson Completion of the sale of the final property is outstanding. The estimated net sale proceeds are expected to be £144,000.

A potential outstanding claim

58. The liquidator was informed by the debtors that a relative has been contributing to the mortgage of one of the properties (Longwood North 40). He asked the court to determine if this relative holds a resulting or constructive trust interest and in the event their claim is successful where do they rank in preference to the creditors.

59. I accept BOSH’s submission that no claim for constructive or resulting trust under Trusts of Land and Appointments of Trustees Act 1996 was either issued or notified to the Court in earlier proceedings. It is contended on behalf of the bank that judgment has been entered in full. It is submitted that the Defendants cannot now seek at this late stage to delay enforcement of the judgment raising claims which have never been mentioned before and are still not evidenced.

60. Nonetheless, I am aware that the Second and Third Defendants and their relatives may not have had the benefit of legal advice or have an understanding of the nature of the liquidation proceedings. In the interests of ensuring fairness, but also finality, I am prepared to make an unless order: Unless any person makes a claim to have an interest in Longwood North 40 in writing within 14 days of the issue of this judgment, served on the Court, liquidator and BOSH, the full proceeds of sale will be applied to BOSH’s indebtedness. The claim must set out, with evidence, the nature of the interest in the property, the reason for it and the amount of the claim.

Orders on the distribution of sale proceeds of property / land held by the liquidator

61. In light of the above I make the following orders:

- a. In accordance with the mortgage, legal charge secured against the Second Defendant’s sole property, the guarantees and indemnities provided by the Second and Third Defendants’, the full net proceeds of sale of Cleugh’s Plain - Scotland Parcel 393 should be correctly and lawfully applied to repayment of the mortgages as set out in the particulars of claim filed in case 568/2019.
- b. In accordance with the mortgage, legal charge secured against the Second Defendant’s sole property, the guarantees and indemnities provided by the

Second and Third Defendants, the future net proceeds of sale of Pub Paradise - Longwood South Parcel 315 should be correctly and lawfully applied to repayment of the mortgage as set out in the particulars of claim filed in case 568/2019.

- c. Unless any person makes a claim to have an interest in Longwood North 40 in writing within 14 days of the issue of this judgment, served on the Court, liquidator and BOSH, the full proceeds of sale will be applied to BOSH's indebtedness. The claim must set out, with evidence, the nature of the interest in the property, the reason for it and the amount of the claim. In the absence of any such claim and in accordance with the mortgage, legal charge secured against the Third Defendant's sole property, the guarantees and indemnities provided by the Second and Third Defendants, the full net proceeds of sale of Millfield - Longwood North Parcel 40 should be correctly and lawfully applied to repayment of the mortgage as set out in the particulars of claim filed in case 567/2019.
- d. In accordance with the guarantees and indemnities provided by the Third Defendant, the full net proceeds of sale of Hunts Bank/Gordon's Post – Francis Plain Parcel 286 should be correctly and lawfully applied to repayment of the mortgages as set out in the particulars of claim filed in cases 567/2019 and 568/2019.

The sale by auction of the assets of V2 Taxi and Tour Company Ltd and V2 Paradise Ltd

Secured assets – Chattels and Vehicles - V2 Taxi and Tour

62. On 17 July 2021 the working Capital believed to be of V2 Taxi and Tour Agency Ltd was sold by auction which raised after fees £27,631.50 before disbursements (Twenty-Seven Thousand Six Hundred and Thirty-One Pounds and fifty pence). This is made up of the sale of secured chattels – namely vehicles – and is set out in Annex 1.
63. BOSH submits that the working capital of V2 Taxi and Tour Agency Limited should be applied to the outstanding indebtedness to the BOSH. The working capital was purchased through loans and approved overdraft provided by the BOSH and secured against real property, vehicles and protected by personal guarantees given by the Director/Shareholders.
64. I accept BOSH's submissions that all vehicle sales are covered under the facility letter dated 15 September 2017 and full net proceeds of sale are to be applied to BOSH's judgment debt in respect of the First Defendant, V2 Taxi and Tour Agency Ltd. The sum to be applied to BOSH indebtedness is £27,631.50.

Total Secured Assets for disbursement to BOSH

65. In light of all the determinations above I approve the spreadsheet in Annex 1 which states that the total amount of proceeds from secured assets to be distributed to BOSH in respect of the First Defendant's debts is £392,653.70.

Unsecured Assets

Unsecured Assets – to be applied to V2 Taxi & Tours and V2 Paradise Ltd

66. BOSH had initially contended that the working capital of V2 Paradise Ltd should be applied to the outstanding indebtedness to the BOSH. The working capital was purchased through loans and approved overdraft provided by the BOSH to V2 Taxi and Tour Limited. BOSH had initially submitted that the Second and Third Defendant Directors unlawfully and without authority from BOSH incorporated a fresh company, being V2 Paradise Ltd and transferred assets and money belonging to V2 Taxi and Tour Limited without consideration. It was originally contended by BOSH that assets of V2 Paradise Ltd belong to V2 Taxi and Tour Ltd as unpaid consideration due and outstanding. The sum to be applied to BOSH indebtedness of £27,961.20.
67. By the time of the post hearing submissions of 31 March 2022, BOSH and the liquidator had agreed a new position.
68. It was accepted that the working capital believed to be of V2 Paradise Limited raised after fees £27,961.20 (Twenty- Seven Thousand Nine Hundred and Sixty-One Pounds and Twenty Pence) before disbursements. This is set out in Annex 1 – under ‘Unsecured Assets’. BOSH and Liquidator now agree that the sale proceeds of these unsecured assets should be attributed to V2 Taxi and Tours in the sum of £9,375.30 and V2 Pub Paradise in the sum of £18,585.90. I approve this agreed position.

Payment to Creditors

69. As is set out in the schedule at Annex 1, BOSH and the liquidator have set out the list of preferential creditors for each of V2 Taxi & Tour and V2 Pub Paradise (around £3,000 to be paid in respect of the former and around £6,500 in respect of the latter). Following payment of the preferential creditors of the two companies there will be balance available to unsecured creditors (in respect of V2 Taxi & Tour BOSH will also be an unsecured creditor in respect of the balance of its judgment debt in the sum of £68,101.57).
70. The totals available for distribution in relation to V2 Taxi and Tours for unsecured creditors are estimated at this stage to be £6,469.28 (resulting in £0.093 in the £ for the total creditors of £69,735.72) and £12,128.63 for V2 Pub Paradise Ltd (resulting in £0.229 in the £ out for the total creditors of £52,753.14).

The liquidator’s fees

71. I approve the liquidator drawing his fees – these are those as set out in the spreadsheet at Annex 1. The fees include but are not limited to the 4% fee of £11,620 on the three properties sold so far made up as follows:

Gordons Post £90,000
Deadwood £45,000
Cleughs Plain £118,000

Total £253,000

Commission at 4% (253,000 x 0.04) = £10,120
Buyers Premium (3 x £500) = £1500

Total £11,620

The Post hearing submissions

72. Following the hearing on 18 March 2022. Mrs Ellick, Mr Pedley, the liquidator, and Mrs Scott met on 30 March 2022 and sent an agreed email dated 31 March 2022 as referred to above. On behalf of the liquidator and BOSH, they narrowed matters to the single issue relating to the personal guarantee and Hunts Bank proceeds of sale which I have determined in favour of BOSH.
73. For the reasons set out above I have decided that the the net proceeds of sale from Mr Henry's property at Hunt's Bank are captured by the personal guarantee to V2 Taxi and Tour Agency Ltd for the reasons set out above and below.
74. During the course of the administration of the various assets the Liquidator has met with the bank. He has had access to certain BOSH records and accounts. His concern is that the majority of the indebtedness is allocated to V2 Pub Paradise in the BOSH internal records. He has concern whether a personal guarantee to V2 Taxi & Tours captures the recorded indebtedness of V2 Pub Paradise.
75. I am satisfied, as BOSH submits, that internal administrative labelling of their accounts and records does not override the evidence contained in the primary documents which are the facilities letters all in the name of V2 Taxi & Tours (and not Pub Paradise). Therefore, there is a lawful personal guarantee from Mr Henry to allow the net proceeds of sale of Hunts Bank to be applied to judgment debt from V2 Taxi & Tours (the First Defendant) to BOSH (the Plaintiff).
76. In directions dated 25 March 2022 I had asked for submissions from the parties on two questions:
- 1. Is BOSH correct to submit that it has a priority claim in respect of the sale of the property / assets of the two companies as opposed to being an unsecured creditor? One can see the argument that BOSH is a priority creditor in respect of the personal property and land of the two directors (the second and third defendants) in respect of which BOSH had either a secured interest by way of charge or personal guarantees from the directors. No other creditor of the two companies could establish a claim against this property which was not held by either company but by the directors personally. The same does not apply in respect of the assets / property held by each company which was subject to sale by auction by the liquidator. Prima facie, the bank would appear to be in the same position as the other creditors of the two companies in respect of this property - an unsecured creditor with no secured interest in the company's property. Is this right?**
77. BOSH submit that there is a priority claim as secured creditor in respect of the sale of the vehicles (working capital of V2 Taxi & Tours); the completed sales of Millfield and

Cleughs Plain and the proceeds of sale, subject to contract and completion of Pub Paradise. BOSH submitted that there is a priority claim as secured creditor in respect of the sale of Hunts Bank, a property held in the sole name of Patrick Henry, not secured by mortgage in relation to lending to V2 Taxi & Tours, but secured by personal guarantee in respect of the lending to the company.

78. As set out above, I accept BOSH's submissions and approve the distribution.
79. The liquidator submitted that BOSH entered into an agreement between the directors of the company in the name of V2 Tour and Taxi Limited on 15 September 2017. The security allows for "all the cars purchased from loan funding" of V2 Tour & Taxi Limited. Therefore, the cars are not disputed and agreed to form part of the security. It is agreed BOSH will hold Millfield as part of the security signed on 15 September 2017 for the debt of V2 Tour and Taxi limited. The liquidator submitted that the loan facility letter dated 04 August 2017 provides security over Cleughs Plain and Pub Paradise through a trust interest for the purchase and renovation of Pub Paradise.
80. It was also accepted that in relation to the other assets which were not held as security and personal guarantee the bank does not hold a priority claim. In relation to the unsecured creditors the BOSH is in the same position as other unsecured creditors.
81. It is however not clear where the other debts of unsecured creditors fall between V2 Taxi & Tours and V2 Pub Paradise. As proposed by the Liquidator in his correspondence of 28 February 2022, it has been agreed by the Liquidator and BOSH that the non-identified company debt should be attributed 95% to V2 Pub Paradise and 5% to V2 Taxi & Tours.
82. I endorse the submissions on behalf of BOSH and the liquidator and approve the distribution.

2. Do the parties accept that the liquidation and appointment of the liquidator over the second company, V2 Pub Paradise ltd, was lawful - if so, on what basis? i.e. is it accepted that the company was insolvent and lawfully wound up by virtue of other debts from other creditors quite independently of the loans that BOSH made to V2 Taxi and Tour Agency Ltd?"

83. It was accepted that for BOSH there was no lawful basis for liquidation of V2 Pub Paradise, BOSH having given no lending to that company. However, it is clear that V2 Pub Paradise was insolvent and therefore lawfully wound up by the virtue of other debts from other creditors. The liquidator submits V2 Pub Paradise does not have any loan documents with the Bank of St. Helena but there are a significant number of other creditors which made the company insolvent.
84. Again, I accept these submissions and that the liquidation of V2 Paradise Ltd and the appointment of the liquidator was lawful.

The statement of the Second and Third Defendants

85. The Second and Third Defendants provided a statement dated 9 April 2022 which I have carefully considered. It was stated to be authored by Lucille Johnson.
86. It was submitted that BOSH knew there were two companies, V2 Taxi & Tours and V2 Paradise Pub so it had been dishonest to suggest that the bank was unaware that V2 Paradise Pub existed. It was argued that the companies should not be penalised for BOSH's poor administration. It was also submitted that BOSH was not a secured creditor of both businesses as it now known that no loans were assigned to V2 Paradise Ltd.
87. For the reasons set out above, I am satisfied that BOSH was both a secured creditor and unsecured creditor of V2 Taxi and Tour Agency Ltd and is entitled to the net sale proceeds of the four properties and vehicles sold in respect of which BOSH either held charges or personal guarantees from the Second and Third Defendants in respect of the debt that the company owed to BOSH.
88. The Second and Third Defendant accepted that they had provided guarantees in respect of the entire fleet of vehicles and Deadwood Property for the First Defendant company and the properties at Pub Paradise and Cleughs Plain for V2 Paradise Ltd. They submitted that just before the liquidation as ordered BOSH put a charge on Mr Henry's property in Hunts Bank which did not form part of the security or was provided as guarantee. They question whether the loan document was a fair document.
89. For the reasons set out above, I am satisfied that each of the four properties can be sold and their sale proceeds applied to the judgment debt to the First Defendant company, V2 Taxi & Tour Agency Ltd. I am satisfied that the paperwork was properly and fairly obtained. While there may be questions as to whether the loans should have been made by BOSH and personal guarantees over their property accepted by the Second and Third Defendants in the prevailing economic climate, these are not questions of law for me to determine.
90. The Second and Third Defendants also submitted that the liquidation and appointment of a liquidator over V2 Paradise Ltd was not lawful. They submit that the business could have been rectified and they were the victims of victimisation by BOSH in a number of ways. They submit that their lives have been ruined to a degree.
91. Without needing to determine the allegations they make against BOSH, I have considerable sympathy for the position in which the Second and Third Defendants now find themselves where both their businesses have been liquidated and their personal properties and assets sold to cover the company debts. Nonetheless, I am satisfied that the liquidation of V2 Paradise Ltd, like that of V2 Taxi & Tour Agency Ltd, was lawful because that company was also insolvent and the liquidator was properly appointed.
92. The liquidator's application is granted. The sale proceeds of the properties and assets set out above and in Annex 1 may now be distributed and applied in respect of the judgment debt of the First Defendant to BOSH in the manner in which I have described.

Rupert Jones, The Chief Justice
19th April 2022