

NCN: [2019] EWHC 3498 (Ch).

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

Case No. CR-2019-007199

Courtroom No. 10

Rolls Building
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Friday, 15th November 2019

Before:
THE HONOURABLE MR JUSTICE MORGAN

B E T W E E N:

LEGACY EDUCATION ALLIANCE INTERATIONAL LIMITED

and

PROGRESSION LIMITED & ORS

MR COLCLOUGH appeared on behalf of the Applicants
MS MACRO appeared on behalf of the Respondents

JUDGMENT
(Approved)

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MR JUSTICE MORGAN:

1. This is an application for an administration order in relation to a company, Legacy Education Alliance International Limited. The application was made on 28 October 2019 and has been before the court twice when it has been adjourned to be heard not by the ICC judge but by a High Court judge at today's hearing.
2. The application and the opposition to it are not straightforward. There has been a very large body of evidence including financial evidence where the numbers being used to illustrate possible outcomes are themselves worthy of examination in detail and indeed have been changed in the past and may still further change in the future. The hearing has taken about one and a half hours. One could drill down deeply and thoroughly into many of the points being argued and indeed the court is in a position to do that, but the company has instructed counsel who for entirely understandable reasons is not able to be in court after 2pm today.
3. In those circumstances I must do the best that I can to produce a properly considered judicial and fair response to the situation. To help with the timing difficulties I am giving judgment immediately at the end of the argument, so I will attempt to identify the main points but not deal with matters perhaps as fully as would otherwise be appropriate.
4. The application is different from the norm in that it is accepted that the only issue for me is whether to exercise the discretion which I have to make an administration order at this hearing. That is to say that it is accepted on the evidence that both parts of paragraph 11 of Schedule B1 to the Insolvency Act 1986 are satisfied, namely that the company is or is likely to become unable to pay its debts and if an administration order were made the situation is one where it is reasonably likely that the purpose of the administration would be achieved.
5. The purpose of the administration in this case is said to be that stated in paragraph 3(1)(b) in Schedule B1, namely achieving a better result for the company's creditors as a whole as compared with the company being wound up without first being in administration. Accordingly, I have a discretion under paragraph 13. One of the things I may do is to make the administration order sought but I can also adjourn the hearing conditionally or unconditionally, so that is the decision I must make.
6. If I make the administration order then certain consequences will follow. Those are the consequences desired by the applicants who are creditors of the company. If I adjourn the hearing, I am asked to adjourn it for five weeks, then certain things may or may not follow. The matter may be back in court in six or so weeks' time when it looks as if, if it did come back that way, the case for an administration order would then be straightforward.
7. The rival positions are the creditors say I should make an administration order today. The company says I should adjourn and the purpose of the adjournment is that the company will prepare a proposal for a CVA. There will be the relevant meetings, including a meeting of creditors. There will be issues possibly as to what is to happen at that meeting. It is possible the CVA will be approved and it is then said that the case will be one where it is no longer a proper case to make an administration order certainly on the application of these creditors.
8. I do not think I need say very much about the principles to be applied. In relation to the discretion I am asked to exercise, I have very usefully been shown the judgment of the Court of Appeal in *Rowntree Ventures Limited v Oak Property Partners Limited* [2017] EWCA Civ 1944 in particular paragraph 24 of the judgment of the Chancellor in that case. The Chancellor refers to the wide general nature of the discretion and the multitude of factors to be taken into account. In a sense that simply spells out and makes explicit what

- one would have derived from the statutory wording and the context. In any case, it does make clear that one must have regard to all the circumstances.
9. Indeed, in any case where a court has to make a choice between two alternatives, one contended for by one side one by the other, one has to work through what the alternatives amount to, who will benefit and who will suffer in each alternative scenario. Of course, a lot of the assessment involves making predictions about future events. Strictly speaking one cannot accurately tell the future but one can assess the potential for advantage and the risk of disadvantage. It may be that the future would be different if one simply waited to see what happened, but often the court is required to act upon its assessment doing the best it can.
 10. I plainly have to take account of all relevant interested parties. In this case the parties who have been identified as potentially interested include the creditors. The position of unsecured creditors is of real weight and significance when one is considering whether to begin an insolvency process and if so which insolvency process. It is also right that one has regard to the position of shareholders, although with a company that is heavily insolvent the prospect of a turnaround so that something eventually finds its way to shareholders may be more remote and therefore attract comparatively little weight.
 11. There is a third group of persons in this case and that is customers of the company. The company offers training course and various types of training and education events. Its customers have been referred to as students. It is a striking fact that these students have prepaid sums totalling about £10 million for courses that have yet to be delivered to them. Each side of the argument stresses the significance of this constituency of interested persons and each side stresses that its preferred approach is better for this group. Therefore, I take into account this group, although I will have to consider in a moment what I think will be better for them and as to the weight to be given to their position. Something will depend on the degree of confidence I have that I can predict what might happen in the different scenarios.
 12. The consequences of making an administrative order are relatively simple to state. The administrators have an offer for the goodwill of the company from Newco and I have had various comments about the seriousness of the offer and the ability of Newco to perform. I also have had submissions, slightly unusual in a case of this kind, as to how successful Newco will be if it does buy the goodwill of the company and continue to train the prepaid student class. It is said to be relevant for me to assess how well Newco will do because that will impact upon the students. Will they get their money's worth and will the courses actually be delivered?
 13. It is also right that the administrators quite properly have said that they are not contractually committed in any way to Newco. If an administration order is made they will see if they can do better from some other bidder and indeed it has been said that there might be a bid from the American parent of the company who will seek to secure the goodwill in the group by making an offer to the administrators.
 14. The position if I adjourn is said to be as follows. The company will identify a proposal for a CVA. There will be a meeting. At that point in the argument quite a number of events or possibilities have been sketched in which it is, I fear, not easy to predict how they will come about. There is £3 million of debt owed to trade creditors. There is about £10 million prepaid amounts received by the company and there are considerable intercompany debts within the group.
 15. If one takes only the sums owed by the company and ignores the sums owed to the company, as I understand it the company owes £16 million. On one set of figures it is also owed £16 million, so the difference if one sets all the debts against each other is small. I am

- told it is about £248,000. I have also been told it is a different figure from that.
16. What will happen at the meeting of creditors, in particular as regards those creditors who will be directly affected by the proposed CVA? If the creditors are considered to be the £3 million of trade creditors, then on the evidence before me, the CVA will be voted down because there is already £1.9 million of the £3 million opposed to the CVA. Therefore, something is going to turn on what should be done with the £10 million of prepaid student funds. If the courses are not provided then those students would on the face of it have a claim, probably easiest to express as a claim in restitution to have their money back.
 17. However that is a contingent claim because if the CVA goes ahead the suggestion is that the courses will be provided. Indeed, if the administration goes ahead the suggestion is that, again, the courses will be provided. Therefore, it will be for the nominee chairing the creditors' meeting to decide whether to have the students vote at a face value of £10 million debt or perhaps £1 in the case of each student. If the nominee marked the debt at £1 then it looks like the CVA would not go ahead. Also, I do not really know how the students will see it if they are voting for a more substantially amount of debt than £1. What will they think about the alternatives of a CVA or an administration?
 18. There is also a question which will arise if the CVA is approved and that is: will it be implemented? There are difficulties because in order for the CVA to be implemented the company has to receive a cash injection from its American parent and there are serious questions about the financial standing of the American parent. Even if that obstacle is overcome during the life of the CVA, which is about 24 months, the further payments to be made to creditors under the CVA depend on payments out of trading receipts and up to date the company has been loss-making. So, there is a great deal to predict and assess.
 19. I will next refer to the submissions that have been urged upon me on the two sides. I have detailed skeleton arguments from both counsel, Mr Colclough for the applicant creditors and Ms Macro for the company. To save time I will not read at length or even summarise how matters are put there. In paragraph 4 of his written submissions Mr Colclough seeks to compare and contrast the two ways forward, one pursuant to administration, the other pursuant to a proposal for a CVA.
 20. The case for administration is very powerfully put. The company is loss-making. It is cash-flow insolvent. It is balance sheet insolvent by over £7 million and the application for an administration order is brought by a group of creditors who are owed approximately £1 million. Finally, it is said the proposed administrator has identified a clear path forward showing a real return to creditors.
 21. Mr Colclough contrasts that with the CVA proposal. He says it is to be funded out of loss-making operations. It is opposed by a substantial body of creditors and, a point he stresses, the CVA cannot really be described as a rescue operation because the effect of the CVA being approved and implemented is that the company remains balance sheet insolvent but not so badly balance sheet insolvent.
 22. He also refers to the problem for the students if this company is allowed to continue to trade. Those submissions are expanded in later parts of the skeleton argument and I have borne fully in mind what is said there. I think I need to refer however to various outcome statements. Mr Simmons who is one of the proposed administrators has prepared an outcome statement that shows a return to these creditors of 29p in the £1 on a winding up, 45p if the CVA is approved and implemented successfully and 88p if there is an administration. Therefore, the creditors say, 88p is far better than 45p and they would like to have that.
 23. I cannot have complete confidence in these computations because various ingredients are open to argument and might be wrong. Also, the 88p result on administration is dependent

- on the prepaid students' £10 million not featuring as debt because the services will be provided by Newco or some other purchaser of the goodwill of the company.
24. I have also been given an outcome statement by Mr Wilson who has been advising the company. He uses 45p for the outcome of the CVA but only 32p for the outcome of an administration. The differences between the two sides are that Mr Wilson's outcome places the prepaid students as creditors to the tune of £10 million in full which drives down the dividend on administration. Indeed, it is submitted by Ms Macro that Mr Wilson's 32p is actually far too high because of the way in which intergroup debt is treated and perhaps the real figure is far smaller.
 25. I do not think that at this stage with this amount of attention to the detailed figures I can really know for certain who is right about all of this. However, what I do know is that the creditors who have brought the application and those supporting them strongly favour administration over a CVA, so I think I am entitled to, with the support of the figures which do seem to show this, come to the view that creditors will be better off with administration than with the CVA.
 26. Insofar as the students go, both sides say that the students will be looked after either with the CVA or with an administration, but of course each side criticises the submission of the other side. It can be said that the new company buying the goodwill in an administration will not have all of the advantages of connections with the present associated company, will not have the experience and so on that the current company has and one simply does not know how Newco will get on.
 27. On the other side it is said that with the CVA the company will be deserted by a substantial number of its creditors and that in itself will jeopardise the provision of courses to students. Of course, if there is any continuing doubt about the continued trading of the company that itself will jeopardise the provision of services to students.
 28. Ms Macro says that the bad figures in the past have persisted for some time, so there is nothing new insofar as they are bad figures. Indeed, the company is improving as is the American parent. She describes the situation now as rosier. She says the company is in turnaround. My own reaction to those submissions is that they have more of advocacy in them than they do of well-founded financial substance. They are optimistic and I fear there is reason to believe they are over optimistic.
 29. Ms Macro submits that all she is asking for today is an adjournment and if I make an administration order that is the end of her client's hopes and so I should give them a chance to see if they can "pull it off" with a CVA and if they are wrong about that then the matter can come back to court in 6 weeks or so. My reaction to that is that doing the best I can the chances of the company being able to "pull it off" are not high. It is a bet against the odds. I cannot say it could not happen, but I see the real obstacles which I cannot make disappear or adequately diminish and there is a problem about an adjournment, a problem for the legitimate interests of the group of creditors and possibly also a problem for students.
 30. The problem for the creditors is that today we have Newco but we may not have Newco in six weeks' time. Again, I cannot for certain say that Newco will go away although I am given by counsel on instructions some information to suggest that. I do not think I can make a finding to that effect but the risk is a risk I would impose on the creditors if I adjourn the matter.
 31. Furthermore, there is evidence that trainers will simply not continue to provide their services if this matter is put off for a minimum of five weeks and then another period until it comes back as an administration hearing. Further, there is a difficulty about taking on new students over the next five weeks. Ms Macro says that that can be dealt with by their fees being paid into an escrow account where they will be secure in the event of an insolvency,

but that is very doubled-edged. It means that that cash will not flow to the company and if the CVA were approved it would not be available to pay out to creditors their instalments of the dividend in the pound.

32. Standing back, my conclusion is that I have a clear jurisdiction to make an administration order and an administration order is the entirely natural and usual response to the circumstances of this case. The case has been adjourned twice. The information is not complete even today and there is considerable room for arguments as to what figures one relies upon.
33. I do not regard the prospect of the CVA going through and being successful as particularly high. I think it is more likely than not one or other of those will not happen and I think an adjournment poses a clear and substantial risk of harm to creditors. I think in those circumstances the balance comes down in favour of an administration order being made today.

End of Judgment

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This transcript has been approved by the judge.