

Neutral Citation Number: [2023] EWHC 2774 (Ch)

Case No: CR-2022-001329

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

7 Rolls Building  
Fetter Lane, London  
EC4A 1NL

Date: 24/10/2023

Start Time: 14.22.29 pm Finish Time: 14.41.33 pm

**Before:**

**HHJ PAUL MATTHEWS**

**Between:**

**PARROT PAY LIMITED (IN LIQUIDATION)**

**Applicant/  
Petitioner**

**- and -**

**GODDINGTON PIERCE LIMITED (IN  
PROVISIONAL LIQUIDATION)**

**Respondent**

-----  
-----  
**MR NIALL MCCULLOCH and MS MAIRI INNES** of Counsel appeared for the  
**Applicant/Petitioner**  
**THE RESPONDENT** did not attend and was not represented

-----  
**JUDGMENT**  
**(As approved)**  
-----

*If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.*

*This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.*

Digital Transcription by Marten Walsh Cherer Ltd.,  
2<sup>nd</sup> Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.  
Telephone No: 020 7067 2900. DX 410 LDE  
Email: [info@martenwalshcherer.com](mailto:info@martenwalshcherer.com)  
Web: [www.martenwalshcherer.com](http://www.martenwalshcherer.com)

**HHJ PAUL MATTHEWS :**

1. This hearing was to have been a contested hearing between the parties of an application to discharge the appointment of provisional liquidators to the company, Goddington Pierce Limited, and also to strike out the winding up petition which had been presented against it. In the event, matters have largely been settled between the parties. But it is still desirable that I should explain the rather complex background here to the order which I am being invited to make.
2. The position is that on 5 May last year a without notice application was made by the liquidators of Parrot Pay Limited for the appointment of themselves as provisional liquidators of the company, Goddington Pierce Limited. At the same time, a petition was presented by those liquidators for the winding up of Goddington Pierce. On the same day, Mr James Pickering QC, sitting as a deputy judge, made that order for the appointment of the liquidators of Parrot Pay Limited as provisional liquidators of Goddington Pierce Limited.
3. About a month later on 8 June 2022, those formerly running Goddington Pierce made an application to discharge the provisional liquidation, and to strike out the winding up petition. This was put on the ground that the debt claimed as the basis for winding up was disputed, and there was no other basis for winding up, and moreover there was no basis for the appointment of provisional liquidators. For procedural reasons, that application was due effectively to be heard only today, or at any rate about now, so some 16 months later.
4. Much more recently, in fact only about ten days ago, an application was made by the liquidators of Parrot Pay, and also therefore the provisional liquidators of Goddington Pierce. This was for an order that, in the event that the winding up order was made

and thereby the official receiver became the liquidator of Goddington Pierce, the official receiver should be immediately removed from office and the provisional liquidators of the company should be appointed as liquidators, together with one other person. I will come back to that.

5. The background to this matter, which in the circumstances is very shortly expressed, is this. I take it from the allegations made in the petition and the application. (I make clear that they have not been subject to any trial so far, and now it appears they never will.) Parrot Pay operated as a kind of employment agency for temporary staff. It employed workers, and supplied them to the customers who wanted them, the end users. It was Goddington Pierce who recruited the workers and directed them to Parrot Pay. Parrot Pay managed to take on these people because it promised them higher take home pay than did other similar companies. Obviously once the customers, the end users, had the services of these workers, they paid Parrot Pay for them directly, or sometimes indirectly, and Parrot Pay would pay the workers. However, the workers were taxed only on their basic pay and their holiday pay.
6. What made the position attractive for the workers was that in addition to these elements they received what was described as a discretionary bonus on top. This was stated to have been subject to a charge, which was said to represent a deduction of tax on that bonus. In fact, it was not. It was not calculated on that basis. Worse, it was in fact simply retained by Parrot Pay. So Parrot Pay is said to have retained all these sums. It is further said that it made payments to Goddington Pierce over quite a short period, about 18 months between June 2020 and December 2021. The total amount paid was nearly £5 million, £4,908,388.38. There appears to be no explanation for this, and certainly no business justification is apparent.

7. Parrot Pay itself went into administration in February 2022, and then subsequently into liquidation in April 2022. The liquidators of Parrot Pay investigated the position, and decided that they would treat the payments that Parrot Pay had made to Goddington Pierce as informal loans to the latter company. They therefore demanded repayment by way of a letter of 25 April 2022. However, no repayment was made. Accordingly, therefore, in May 2022, as I have already said, Parrot Pay presented a winding up petition on the basis of the alleged unpaid debt, and applied for provisional liquidators to be appointed to Goddington Pierce. The order was made. As I have also said, a month later Goddington Pierce's directors applied for the orders to be set aside and the petition struck out.
8. However, in the last few days or possibly couple of weeks, the matter appears to have reached a resolution. Those who were formerly making the discharge application now wish to withdraw it, and, indeed, to consent to a winding up order being made in relation to Goddington Pierce. There is a small point about the jurisdiction of the court to permit the withdrawal of an application as opposed to its dismissal when the applicant does not pursue the application. There is no *express* power that I am aware of, or indeed that counsel is aware of, permitting an application once made by issuing the application notice to be withdrawn.
9. However, CPR rule 3.1(2)(m) does allow the court to take any step or make any order for the purpose of managing the case and furthering the overriding objective. I have on at least one previous occasion (*Agents Mutual v Moginnie James Ltd* [2016] EWHC 3384 (Ch)) held that this power extends to permitting amendments to be made to applications once issued. I can see no reason why the width of those words would not extend to permitting an application to be withdrawn, instead of simply amended.

So, I hold that that is possible. Of course, any permission given by the court to withdraw an application would be on such terms as the court might consider appropriate, including costs or other consequential matters.

10. In this case, I note that the decision to withdraw the discharge application was made a long, long time after it was originally issued, I think some 16 months, and there have been a number, I think eleven, witness statements already filed and about half a dozen expert reports filed in relation to this matter. Certainly a lot of preparation has been done. There does not appear to have been any change of circumstances which, on the face of it, would justify withdrawal at this stage, save simply a change of mind on the part of the applicants for discharge. I note in passing that Parrot Pay by its liquidators alleges serious breaches of the provisional liquidation order on the part of the directors of Goddington Pierce, but I do not need to deal with any of those now.
11. So, I consider first of all the discharge application. As I say, Goddington Pierce's directors now seek to withdraw it. Certainly, they are not here to pursue it. I have held that the court can permit a party to withdraw an application. In this case Parrot Pay agrees but, of course, wants to make sure that it is awarded its costs. I am not asked to deal with the merits of this application, in which case I would go on and decide whether it was appropriate to dismiss it on its merits. I will therefore permit the withdrawal of the application, but on the basis that the costs need to be dealt with. I can see no reason why the general rule should not apply, and that therefore the successful party (here the liquidators of Parrot Pay) should have their costs paid by the unsuccessful, that is in this case Goddington Pierce.
12. I turn to the winding up of the company itself. That is what Parrot Pay seeks on the basis, first of all, that it is a creditor of Goddington Pierce in the sum of

£4,618,583.38, the petition debt, but also on the just and equitable ground. These grounds are provided for in section 124(1)(f) and (g) of the Insolvency Act 1986. Since the discharge application has been withdrawn, there is no further dispute, as far as I can see, as to the petition debt or, indeed, as to the court's jurisdiction to wind up the company. Indeed, as it happens, the company itself consents to the winding up.

13. Having looked at the papers filed, it seems to me the requirements for the winding up order to be made are met. The petition has been advertised, and there is a certificate of compliance, Parrot Pay certainly seems to have standing. Whether the claim is for a loan or for money had and received makes no difference. In my judgment, Parrot Pay can properly be treated as a creditor of Goddington Pierce whether present, contingent, or prospective. There is also the question of the inherent jurisdiction to wind up but in the present circumstances I do not think that it is necessary for me to discuss that.
14. There is no material evidence before the court that the payments made by Parrot Pay to Goddington Pierce were for the purposes of Parrot Pay's trade or for any other business purpose. It is not apparent that any services were provided to Parrot Pay, and certainly not of the value of almost £5 million. In particular, no invoices were raised. In those circumstances, it seems to me that the claim to repayment of the money is effectively unanswerable, and certainly unanswered. There are two supporting creditors, namely, HMRC for the sum of £414,902.02 and Acorn BS Services Limited for £4,402,377.15. So, there is considerable creditor support. Certainly, HMRC agrees to the order. So, in my judgment, it is indeed proper for the court to make the winding up order as sought on the grounds that the company is unable to pay its debts.

15. That brings me, therefore, to the appointment application, as it has been called. That is made by notice dated 13 October 2023, on the basis that the court would first make the winding up order and therefore, of course, the official receiver would be automatically appointed as liquidator by virtue of section 136(2) of the 1986 Act. Then this application is made under section 172(2). This provision empowers the court to remove a liquidator from office. The application is made that I should remove the official receiver from his position, and appoint the current joint provisional liquidators as liquidators of the company, together with a gentleman called Rob Armstrong of Kroll as a conflict liquidator.
16. As I understand it, everybody, including the official receiver, consents to that being done. The reasons assigned are that the joint provisional liquidators have obviously investigated Goddington Pierce's affairs, and so it will save time and money to appoint them, because they will not have to do that again. Moreover, they are also the joint liquidators of Parrot Pay and also of Acorn BS Services Limited, which they believe was a party to effectively the same fraud.
17. As to the need for a conflict liquidator, this is put on the basis, first of all, that the litigation up until recently was very hard fought. Every point was being taken that could be taken. Therefore it might be expected that there would be just as many disputes after the liquidator was appointed as before. Secondly, it is put on the basis that the provisional liquidators that will be appointed as liquidators are also insolvency office-holders in relation to other companies in the same set of transactions but on the opposite sides of some of them and that could give rise to conflicts of interest. If there were such a conflict liquidator, it is said that that would reduce the need for applications to the court, and would not lead to enormous expense

being incurred because the conflict liquidator would act only when that was necessary.

18. It appears there is no memorandum of understanding or other agreement between the liquidators as to exactly when those circumstances will arise, or what would need to be done. But I consider that the court can rely on them as professional office-holders, and officers of the court, to take the matter not only seriously but to be aware of the possibility of difficulties and to either agree who should take what role as and when necessary or if that for some reason proves to be too difficult, then to apply to the court for directions. So I will make the order removing the official receiver and appointing the joint provisional liquidators as liquidators and Mr Armstrong as the conflict liquidator.
19. Now we come to the question of costs. The costs so far as Parrot Pay are concerned are effectively threefold. There are the costs of the petition itself, there are the costs of the petitioner's costs of the provisional liquidation application, and then there are the petitioner's costs of the discharge application. It is submitted that these should all be borne by Goddington Pierce, and as an expense of the liquidation. Goddington Pierce apparently agrees to the first and second of these, but not to the third. It is neutral in relation to the third. In my view, I can see no good reason for the distinction between the first and second on the one hand and the third on the other, on the facts of this case. Costs should follow the event, and, in my judgment, they all fall within rule 7.108(4)(h).
20. The last item then is the question of the costs and remuneration of the provisional liquidators. Because I have now ordered that Goddington Pierce should be wound up, it means that the expenses of the provisional liquidation and the remuneration of the

provisional liquidators are both expenses of the liquidation under rule 7.108(4)(a)(i) and (f)s. Again, Goddington Pierce is neutral about the joint provisional liquidators' costs of the discharge application. Once again, I can see no good reason for distinguishing between those and the other costs and remuneration. So, I consider again that they are covered by the rules, and that they are all expenses of the liquidation.

**(For proceedings after judgment see separate transcript)**