



Neutral Citation Number: [2023] EWHC 3110 (Ch)

CR-2022-002658

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF HALL MEDIA GROUP LIMITED

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

05/12/2023

Before :

I.C.C. JUDGE JONES

B E T W E E N:

THE BRITISH FILM INSTITUTE

Petitioner

- and -

HALL MEDIA GROUP LIMITED

Respondent

Mr James Culverwell (instructed by Bates Wells Solicitors) for the **Petitioner**
Mr Angus R. Gloag (instructed through the public access scheme) for the **Respondent**

Hearing dates: 13 October 2023 and written submissions received 29 November 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.

.....05/12/2023.....

I.C.C. JUDGE JONES

I.C.C. Judge Jones:

1. This judgment follows the receipt of supplementary written submissions pursuant to the Order made at the hearing on 13 October 2023. The issue is whether the debt (applying the definition in **Rule 14.1(3) of the Insolvency Rules 2016**) of £216,000 relied upon in a winding up petition presented on 19 August 2022 is genuinely disputed on substantial grounds whether by set off affecting standing to present the petition or by cross-claim. The petition relies upon a statutory demand and, therefore, the deeming provision of **s.123(1)(a) of the Insolvency Act 1986** (“**the IA**”) applies should there be no such dispute. In that event, the Court’s discretion is to be applied in circumstances of the papers being in order and this being a “COMI Petition”.
2. The evidence on behalf of the Respondent (“the Company”) is from its sole director, Ms Hall. In her first statement, she states there is a dispute arising from the asserted fact that the contract upon which the Petitioner relies to establish the debt, a “Partnership Agreement” dated 21 September 2021, was terminated by the Petitioner with the Company only having received minimal benefits. A counterclaim is proclaimed. In her second witness statement she adds:

22. ... In respect of the Partnership Agreement, it was intended that the Company would receive certain benefits such as imaging rights to use the Petitioner’s logo indefinitely and also so that I could state that I had worked with them (this was to get further work in the industry). They also would allow me access to videos and pictures from the festival which I could put on my website and use in marketing. I would also have the benefit of being invited to events throughout the year. The Petitioner offered to send a thank you email to people who attended drinks for my sponsorship evening. They also offered tickets to premieres (I still had to pay for some film tickets) and attendance to the events I had sponsored like the Critic talks

...

23. ... the Petitioner did not deliver on its promises made to the Company. The chronology further demonstrates the confusion caused, which led me to honestly believe that the Partnership Agreement had been paused by the Petitioner in February 2022. The Petitioner stated very clearly in writing when they sent me the Statutory Demand in May, that they had terminated the Partnership Agreement and that they had instructed me to remove all branding in February. However, there is no mention of this in the email I received from Liz Muggeridge in February

...

24. I enclose evidence which details the harassment experienced by the British Blacklist in the form of a Reputation & Crisis Report (“The Report”) at pages 10 to 28 of AH2 which details the circumstances surrounding the Dispute as well as the potential losses to be suffered by the Company ...

29. The losses I have incurred include Independent Film Trust not wanting to work with me which has caused me to suffer losses in the realms of £100,000 -£150,000 (pages 41 to 42 of AH2). The CEO of Independent Film Trust is very good friends with Akua Gyamfi/British Blacklist, and they hosted the event where she attacked me. I have also lost business with Black Country Living Tours in the sum of £8,000 (page 43 of AH2), Bupa in the sum of £50,000, and an agency called Syon Media in the sum of £24,000 (page 44 of AH2). Furthermore, I have not been invited to certain industry events and have been shunned from the industry which has caused reputational damage to both of my companies. After meeting Joshua Llewellyn at an event hosted by Film London earlier in the year, Laura Stratford from Film London, who would usually approach me to arrange work has not been in contact.”

3. The passages selected above encapsulate the nature of the dispute claimed to have arisen from the stated termination of the partnership agreement and/or the understanding it was “paused”. Whilst there is confusion within the statement over the substance of the claims relating to “the British Blacklist” and their relevance to the dispute/counterclaim, it was accepted at the hearing on behalf of the Company that this aspect of the evidence need not be addressed. I agree with that approach. It cannot be linked to a genuine and substantial dispute of the Petitioner’s debt.
4. Ms Hall’s evidence is replied to by the witness statement of Mr Brousseau, the Petitioner’s inhouse General Counsel and DPO, a solicitor. His evidence is to the effect that the Partnership Agreement required payment of a sponsorship fee of £200,000 plus £40,000 VAT within 30 days of receipt of a valid invoice. The invoice was issued on 21 November 2021 and payment required by 12 December 2021. It was not paid.
5. Mr Brousseau also explained that:

[15] the Petitioner is a charity it could not deliver the benefits for the Future Film Festival whilst payment was outstanding ... The Company was informed by my colleague Liz Muggeridge on 9 February 2022 ... that the Sponsorship Fee was being reduced by £20,000 plus VAT in light of the fact that the Petitioner was not delivering the Future Film Festival benefits, BFI Memberships or video assets.

[16] The Future Film Festival benefits were added to the Partnership Agreement at no extra cost to the Company, but as a standalone sponsorship it was worth approximately £15,000 plus VAT. Therefore, taking the above into account a reduction of £20,000 plus VAT was extremely generous.”.
6. Mr Brousseau added that in fact the Sponsorship Sum was calculated broadly on the basis of the discounted value of the four London Film Festival sponsorship packages. Therefore, the Future Film Festival and ‘year-round’ benefits were included without any extra charge. However, that appears irrelevant based upon the fact that the Petitioner was in any event prepared to value the absence of the specified benefits at £20,000 plus VAT.
7. Mr Brousseau then stated that the Company had received or was offered all of the benefits to be provided by the Petitioner under clause 2 of the Partnership Agreement except for those identified in the many sub-paragraphs of paragraph 18 of his statement. As to them, for each item he sets out an explanation as to why this was not a breach of the Partnership Agreement. For example: replacement of the original benefit with the Company’s agreement and/or by an effective equivalent alternative; the benefit was available but not used by the Company; the benefit being dependent upon payment by the Company.
8. In paragraph 19 Mr Brousseau drew attention to the “*positive feedback*” given by the Company concerning the services and product provided by the Company under the Partnership Agreement in contradiction, he observed, to its current stance when faced with the petition debt.
9. It is to be observed that in many ways this does not present a response which might be anticipated from the non-payment of the sponsorship fee: one might expect the response that there was no entitlement to any benefits without payment of the fee and that the failure to pay means there was no entitlement to any benefit under the agreement. That is not so in accordance with the evidence of fact Mr Brousseau presents. I refer to this in this manner only to identify the ambit of the response and to exclude any suggestion

that this matter can be resolved simply by asserting that there cannot be any entitlement to benefit because nothing has been paid.

10. Instead, the response is based upon a case that the Company received all the benefits to which it was entitled in any event, subject to explained exceptions and to the reduction in the fee of £20,000 plus VAT. That is the issue in response the Court needs to address when considering whether there is a genuine and substantial dispute.
11. That response raises the (at least initial) questions within the genuine and substantial dispute context: was the agreement terminated or postponed; is this a debt or damages claim to which there is a set off or cross-claim; if so, how is the Court to identify the debt or liability owed by the Company?
12. At the hearing the Company asked me to admit further evidence addressing breach and loss relied upon for a set off/counterclaim issue. I read it out of good will. For reasons given, I refused to admit it subject to permitting the application to be renewed should such admission prove to be necessary in the light of the manner in which each side's case was progressed during the hearing. At this stage of the judgment, therefore, I will ignore it.
13. The starting point for the judgment must be the Partnership Agreement which had an entire agreement clause. It is not in law a partnership agreement but a one year sponsorship agreement which is dated 17 September 2021 but came into force when signed. Only the Petitioner's counter-part is exhibited and the date they signed it is 1 October 2021. It can be assumed the Company signed it around that time.
14. In essence, the Company was to be the sponsor of the Petitioner during the contractual year. It would be described as the "*main sponsor*" of the "*65th BFI London Film Festival: The Liberation Initiatives (2021)*" and was to be acknowledged as a "*supporting partner*" of four LFF Programmes. There were detailed sponsorship entitlements to be received by the Company in respect of the Film Festival and the Programmes set out within clause 2. In addition to specified entitlements concerning the events themselves, the Company was granted the non-exclusive, royalty-free licence of the Petitioner's name and logo.
15. The consideration for those rights and benefits was the sponsorship fee payable upon receipt of invoice as the Petitioner's evidence referred to above explained. There was a default interest provision. The Agreement also provided for a series of obligations upon the Company as listed in clause 3 and rights conferred on the Petitioner within clause 4.
16. Clause 5 specifically obliged the Petitioner (amongst other matters and in summary) to produce and publicise the festivals, to grant the sponsorship rights and to cooperate with the Company in good faith. There was a £100,000 liability limitation clause in favour of the Petitioner and an exclusion of liability provision in favour of both parties for indirect or consequential losses including loss of profits or loss of business.
17. There is no dispute that the sponsorship fee should have been and was not paid by 12 December 2021, within the 30 day period following invoicing. The fact of nonpayment meant that the Petitioner could have terminated the Partnership Agreement

or waived the breach, which was obviously unlikely, or varied the agreement by extending time for payment whilst undertaking its obligations in the meantime subject to alternative agreement.

18. However, termination certainly did not occur until (potentially) at earliest an email to the Company sent on 9 February 2022. That email explained that the Petitioner:

“... is uncomfortable continuing to deliver benefits that have both direct costs and a very significant brand value. Given that The London Film Festival back in October 2021 made up the bulk of our partnership and with Future Film Festival being so close it is now almost impossible to activate; regrettably we have to pause our partnership for now.”

19. I am satisfied that was not termination. The Petitioner unilaterally chose a “pause”. It is also apparent from the email that there had been previous discussions concerning payment or its lack of and that the Petitioner was still willing to consider a payment plan. The email then reads:

“In terms of pausing the partnership and realigning the value of the contract and to your point below, we are reducing the fee to £180k + VAT in light of the fact that we are not delivering the Future Film Festival benefits, BFI Memberships or video assets – I hope you will agree that this represents a generous reduction when you benchmark the market value of these items against the value of the Main Sponsor level package you have already received at LFF.”

20. The concept of unilaterally pausing a contract is a difficult one. Either a contract exists and is to be performed or it is terminated unless there is another agreement between the parties. On the other hand, the reality of the position was that the Company could not require performance without payment and it would have had to agree to a pause unless it wanted to terminate the agreement in that circumstance or have it terminated by the Petitioner.

21. There was no immediate response and the Petitioner sent a further email asking for confirmation as to when the £180,000 plus VAT would be paid, again indicating a willingness to consider a payment plan. The response is in an email from Ms Hall sent 6 March 2022. I satisfied upon its true construction that she accepted the “pause”. The acceptance of the pause was in the context of a revised sponsorship fee reduced by £20,000 plus VAT. The Company plainly (indisputably) accepted that new fee by its expressed intention to pay it. It is also indisputable that this settled any valid dispute concerning the facts, matters and consequences which gave rise to the offered reduction.

22. Ms Hall also wrote that she anticipated payment to the Petitioner the following week. It is in that context that she raised issue with what she described as the Petitioner’s cancellation of “BFI Membership” and “Video Assets”. She also raised five questions concerning benefits the Company she asserted the Company should have but did not receive. For example, that her invitation to a lunch was last minute. It is to be observed that those five matters are relatively minor matters.

23. The Petitioner answered the 6 March 2022 by an email sent 10 March 2022. In effect the pause continued with an informal deadline for resolution by payment, whether with a payment plan or not, of 31 March 2022. The Petitioner remained willing to provide “BFI Membership” and the “Video Assets” once payment was made. In regard to membership the payment required of less than £50 was in context nominal.

The five questions were answered and insofar as benefits had been identified as being belatedly or not provided, they all fell outside the Partnership Agreement.

24. By email sent 29 April 2022 the Petitioner chased for payment. Although the date is not specified, there is a message at that time to the Company identifying the debt as the original invoiced sum less a credit note for £24,000 which was for the reduction offered by the Petitioner and accepted by the Company.
25. On 1 May 2022 the Company asked for the invoice to be resent with the amended amount on the basis that it would be paid in full that month. There was further email correspondence and on 11 May 2022 the Petitioner asked for confirmation that payment would be received before 31 May 2022.
26. Although the exhibits contain a myriad of irrelevant documentation, the communications end there. They do not crystallise the circumstances and date on which the “pause” ended. However, it is apparent that the Partnership Agreement has terminated without the agreed pause otherwise having been lifted. There is no evidence to the contrary. The back-stop date is the expiry of its one year term in or about October 2022 but it is also clear that non-payment of the fee brought the contract to an end by not later than the date of service of the statutory demand. I anticipate a trawl through solicitor’s correspondence will identify an earlier date.
27. Whatever the precise date, there can be no dispute that the position by about 6 March 2022 and after was as follows:
 - a) The sponsorship fee had been reduced by agreement to £180,000 plus VAT which settled any dispute that had arisen or might arise from the fact that the Petitioner had/was not delivering the Future Film Festival benefits, BFI Memberships or video assets (the latter two being in any event available subject to payment for them).
 - b) Payment was due pursuant to the original invoice and its credit note. That sum remained due and owing and could have been sued for as a debt. Under the terms of the Partnership Agreement payment was due subject only to invoice as a liquidated sum. Payment was not conditional upon any performance of any obligation owed by the Petitioner under the Partnership Agreement.
 - c) Subject to the obligation to make that payment, by 6 March 2022 the parties agreed to a suspension of compliance with the contractual obligations unless and until the sponsorship fee was paid. This meant there would be no further obligation to perform (subject to the extant obligation to pay £180,000 plus VAT).
 - d) Therefore, the Company can have no set off or counterclaim for noncompliance with the terms of the Partnership Agreement occurring after on or about 6 March 2022 because of the suspension.
 - e) However, there are at least grounds for a substantial dispute that any causes of action arising from breach(es) prior to that date of suspension remained extant except for those settled by the reduction in fee as addressed above.
 - f) Therefore, had the Petitioner commenced claim form proceedings for payment of the reduced sponsorship fee and had the Company been able to raise a counterclaim which had not been settled by the fee reduction, judgment would have awarded the debt less any successful counterclaim. Any such counterclaim

would have had to take into consideration the £100,000 liability limitation and exclusion clause.

- g) That means the only question is whether events prior to 6 March 2022 can raise the required genuine and substantial dispute for an amount which leaves a debt and/or liability of less than £750.
- h) If so, there may still be a question whether the test is satisfied if the Company's financial position meant it could and can never pay the sponsorship fee. That is a matter that need only be addressed should it be necessary to do so.
28. As to the existence of a set off or cross-claim for breach before about 6 March 2022: In my judgment the evidence in answer from the Company is wholly inadequate for the purpose of establishing a genuine and substantial breach. The asserted issue of confusion arising from the 9 February 2022 email caused by the "pause" as identified in paragraph 23 of the second witness statement (quoted above) can be ignored because the pause was agreed to by the Company.
29. Ms Hall provides a chronology within paragraph 23 but there is nothing of substance within it for the purpose of disputing a debt of more than £200,000 that might assist the Company by way of a set off or cross-claim. I note that in her chronology she refers to never using images from the festival, which appears from her evidence to be the Company's choice, but admits using the Petitioner's logo.
30. Losses are identified in paragraph 29 of her second statement but these are connected to the "the British Blacklist" issue which cannot establish a dispute with the Petitioner even on a substantial dispute test and, rightly, was not pursued in argument.
31. That leaves paragraphs 22 (also quoted) but that is no more than a statement that the Petitioner did not deliver on its promises. There is no evidence detailing any breach of the obligations identified within paragraph 22.
32. In reaching that judgment I have decided that the fact that the benefits which resulted in the fee reduction were not provided does not assist the Company. That is because the reduction was agreed and any claim settled as decided above. I also note that there is nothing to suggest within the evidence that such non-performance would have significantly impacted upon a debt of more than £200,000 to the extent that the Company might be able to pay the balance.
33. In referring to the effect of the matters raised upon a debt of more than £200,000, I appreciate that in cases of claims that cannot be quantified by the respondent concerned, there is potential cause for deciding that the debt subject to a set off or cross-claim does not establish an inability to pay debts as they fall due because the amount owed is uncertain and needs to be quantified before payment can be made of the balance. That position might/can lead to other evidence concerning ability to pay. That will be considered further below but in this case the point at this stage is that the Petitioner can assert that even a hyperbolic approach to the Company's purported set offs/cross-claims (assuming they were supported by evidence to the extent required by the genuine and substantial dispute test) would leave an undisputable debt far in excess of £100,000.
34. That leads next, however, to the further evidence dated 12 October 2023 and the issue whether my decision refusing to admit it should be reviewed. The consequence of a

winding up order has to be borne in mind together with the fact that it is a class remedy. As a result greater latitude may be given than would be likely to arise in ordinary litigation. The fact that the Company has failed to present impactful evidence should not necessarily be held against the interests of the other creditors if it would establish that the Company should not be wound up.

35. In the light of the conclusions reached in my judgment at this stage, I consider it right to at least reflect on the further evidence including its appendices or schedules.
36. That does not mean the submissions of Mr Culverwell for the Petitioner should be ignored:

“There has been no change in any of the matters dealt with in the parties’ existing evidence, nor any new developments, that could warrant further evidence being submitted. None of the late evidence in fact introduces anything new that was not available at the time of the original statements. The Respondent was represented by solicitors at the time, had ample opportunity to submit its evidence in accordance with the original directions, and it did so. Further, the Petitioner was entitled and had the opportunity to respond to that evidence. 68. No explanation has been given as to why the late evidence should be admitted, nor why it wasn’t included originally. The Petitioner was deprived of the opportunity of adequately considering it or taking instructions before the oral hearing, and would still be deprived of any opportunity to respond. No application has been made for relief nor with any particular basis for permission to be granted.”

37. The points made are valid but at least at this stage they should be applied as an emphasis of the fact that the Company has had more than adequate time to detail its case and should have done so.
38. Taking that into consideration but in any event, the reality is that the contents of this evidence does not take the matter further for the benefit of the Company. General assertions such as follow do not assist:

“It is my submission that the relatively nebulous manner in which the BFI treated the specific details of my contract and my raised causes for concern caused Hall Media Group Ltd damage and substantively, unable to capitalise on the sponsorship opportunity. This greatly affected our revenue in that period.”

“It is not simply a question of the company not having the funds to have paid for the sponsorship and therefore should be wound up is in my view incorrect to make me liable for all the debt. In my view, I simply did not receive all of what was on the tin. I am not disputing I owe the BFI monies, it’s just the extent of it.”

The discounted offer of £20K offered to me is only represented of another festival which did not materialise, this is not nearly enough, in lieu of what the company did not get for the London Film Festival and year round opportunities.”

39. Nor does Section D, entitled “Schedule of Deliverables” assist. The matters relied upon include those that were answered in the Petitioner’s email sent 10 March 2022 yet that response has not been addressed nor any of the matters detailed by Mr Brousson in the many sub-paragraphs of paragraph 18 of his statement as mentioned above. Further, it is also not surprising bearing in mind the nature of the matters referred to that monetary value is not capable of being ascribed to most of the matters raised. There is no apparent

loss. Insofar as sums are identified, their quantum does not reach £10,000 even had they merit.

40. Mr Culverwell also notes that twice Ms Hall states that she does not dispute owing money but merely queries the amount. However, that amount cannot possibly be considered sufficient to lead to the conclusion that there might be a significant dent in the debt for which the *s.123 IA* deeming presumption applies.
41. In my judgment the Company's evidence does not establish any substantial dispute to the effect that damages have been suffered. The Petitioner has standing as a creditor to present this petition and to seek a winding up order on the basis of the unpaid petition debt.
42. However, even if the matters raised by the Company concerning performance could be said to have established breach on a genuine and substantial test ground, and equally produced loss and damage, there is no evidence to support a contention that it will come near to a set off or cross-claim of even (say) £50,000 let alone £100,000. That conclusion ("the Alternative Conclusion") can be reached without needing to address and add in the consequences of the liability limitation and/or exclusion clause of the Partnership Agreement.
43. Applying the Alternative Conclusion, the Petitioner has in any event an undisputed debt (as defined by **Rule 14.1(3)**) of more than £750 and has standing to present a petition and ask for the usual compulsory order even if the amount payable is uncertain.
44. This leads next to the financial position of the Company in the light of the *s.123 IA* deeming presumption. There is no suggestion that the Company can make any payment of a significant sum towards the unpaid sponsorship fee which stands at over £200,000. The best that can be said is that there is a business plan for anticipated net profit in the region of £31,000. There is plainly a debt due and owing in excess of £750 which cannot be paid and the evidence establishes that the Company is unable to pay its debts for the purpose of *s.122 of the IA* applying *sub-section (1)(f)*.
45. Indeed it appears from the email correspondence and the general financial position of the Company identifiable from the business plan that the Company relied upon obtaining third party funding to pay the sponsorship fee and its problem has always been that it did not receive it.
46. Whether that it is correct or not, however, this is a case where the Petitioner as creditor is entitled to the winding up order sought on the evidence before the Court.

Order Accordingly