



OUTER HOUSE, COURT OF SESSION

[2022] CSOH 74

P321/22

OPINION OF LORD ERICHT

delivered *ex tempore*

In the Note

SPEX GROUP HOLDINGS LIMITED

Petitioner

against

(FIRST) ALEXANDER IAIN FRASER AND THOMAS CAMPBELL MACLENNAN
AS JOINT LIQUIDATORS OF GENERAL SERVICES 1 LIMITED;
(SECOND) ALEXANDER IAIN FRASER AND THOMAS CAMPBELL MACLENNAN
AS JOINT LIQUIDATORS OF GENERAL SERVICES 2 LIMITED;
and (THIRD) MCR OIL TOOLS LLC

Respondents

**Noter: Dean of Faculty et Roxburgh; CMS Cameron McKenna Nabarro Olswang LLP
First and Second Respondents: McIlvride KC et Massaro; BBM Solicitors
Third Respondents: Higgins KC et Ower; Ledingham Chalmers LLP**

28 September 2022

[1] This is a note seeking directions in terms of section 112 of the Insolvency Act 1986 in respect of the liquidations of General Services 1 Limited (formerly known as SPEX Offshore Limited) (“GS1”) and General Services 2 Limited (formerly known as SPEX Services Limited) (“GS2”).

[2] The Noter has submitted a claim in the liquidation of GS1 and is a contributory of GS2. The first and second respondents are the liquidators of respectively GS1 and GS2. The third respondent (“MCR”) has submitted claims in the liquidation of GS1 and GS2.

[3] Parties have reached agreement on most of the contentious issues in relation to directions.

[4] That leaves the only contentious issue as being who would be parties to any appeal against adjudication. The contentious parts of the directions sought in the prayer are:

“(8) MCR and SPEX, if dissatisfied with the acceptance or rejection of the MCR Claims, are each entitled to appeal to this court within 4 weeks of the date on which the MCR Adjudication Decisions are issued by the Liquidators.

(10) SPEX and MCR, if dissatisfied with the acceptance or rejection of the SPEX Claim, are each entitled to appeal to this court within 4 weeks of the date on which the SPEX Adjudication Decisions are issued by the Liquidators”.

[5] The only remaining issue is whether the Noter will only be entitled to participate in any appeal of MCR’s claim in the liquidation of GS1 if the liquidators have accepted the Noter’s claim when they adjudicate on that claim. That issue is disputed between the Noter and the third respondent. The liquidator is neutral.

[6] In my view the issue is one of interpretation of the Insolvency (Scotland) (Receivership and Winding up) Rules 2018/347 (the “Scottish Rules”). Rule 7.19 of the Scottish Rules makes the following provision for appeals read short:

“(5) **any creditor** may, if dissatisfied with the acceptance or rejection of **any claim** appeal to the court not later than 14 days before the end of the accounting period.”
(Emphasis added)

[7] There is no dispute that the word “creditor” includes a person whose own claim has been accepted or rejected and appeals against that decision. The question for me is whether the word “creditor” includes a person whose own claim has been rejected but wishes to appeal against the decision to accept or reject another party’s claim.

[8] The Dean of Faculty submitted that on the plain wording of the Scottish Rules a creditor whose own claim has been rejected is entitled to appeal in respect of another party's claim.

[9] Ms Higgins disagreed. She submitted that the Noter could only be afforded a right of appeal in respect of any adjudication made by MCR in the winding up of GS1 if the Noter is found to be a creditor of GS1 upon adjudication of its own claim in that winding up by the Liquidators. Once a party's claim *qua* creditor is rejected by the liquidators, they cease to have any interest in the liquidation and become a stranger to the process. This was the situation in England (The Insolvency (England and Wales) Rules 2016 Rule 14.8 (the "English Insolvency Rules"), McPherson & Keay's *Law of Company Liquidation* paragraph 12-065, *Re a Company no 004539 of 1993* [1995] BCC 116). It cannot have been the intention of Parliament to allow a rejected creditor to appeal. A party who has no interest in a liquidation should not be permitted to put others to the expense of an appeal.

[10] The starting point for resolution of this dispute is consideration of the wording of Rule 7.19. That rule is not limited to appeals against the decision on the person's claim but applies to "any claim" so also applies to appeals against the decision on other persons' claims. The wording makes no distinction between these categories of claims. In my view the word creditor in Rule 7.19 has only one meaning. It does not have a different meaning depending on whose claim is being appealed. It does not include some creditors whose claim has been rejected and at the same time exclude other creditors whose claims have been rejected. A creditor is a creditor. To impose a gloss on the meaning of creditor to subdivide it into two different categories of persons and give Rule 7.19 a different effect depending on the category goes far beyond the clear wording of the rule. In my opinion, the clear meaning of

the wording of Rule 7.19 is that a creditor whose own claim has been rejected is entitled to appeal against “any claim”.

[11] I am fortified in this view by a consideration of the rules as a whole. The word “creditor” is used to include a person whose claim has been rejected. For example Rule 7.17 provides:

“If a creditor produces under rule 7.16 a statement of claim or documentary evidence of debt or other evidence which is false—

- (a) the creditor is guilty of an offence unless the creditor shows that the creditor neither knew nor had reason to believe that the statement of claim or documentary evidence of debt or other evidence was false;”

[12] That criminal offence would be deprived of almost all purpose if the word “creditor” did not include a creditor whose claim has been rejected. A person who produced a false claim would be guilty an offence only if the claim was accepted and not if it was rejected. Given that most false claims will be detected by the liquidator and rejected, that could remove the effectiveness of the criminal sanction.

[13] The following proposition of English law is set out in *McPherson & Keay’s Law of Company Liquidation*:

“A creditor has the right to apply under r.14.8(3) [of the English Insolvency Rules] unless and until the liquidator had rejected his or her proof.”

[14] Whatever may be the case under English law, I am not persuaded that this should be followed in Scotland.

[15] The wording in the English Insolvency Rules is different from the wording in the Scottish rules. The English rules provided separately for appeals by a creditor against a decision on his own claim and a decision in respect of another person’s claim. Rule 14.8 provides:

“Appeal against decision on proof

14.8. — (1) If a creditor is dissatisfied with the office-holder’s decision under rule 14.7 in relation to the creditor’s own proof (including a decision whether the debt is preferential), the creditor may apply to the court for the decision to be reversed or varied.....

(3) A member, a contributory, any other creditor or, in a bankruptcy, the bankrupt, if dissatisfied with the office-holder’s decision admitting, or rejecting the whole or any part of, a proof or agreeing to revalue a creditor’s security under rule 14.15, may make such an application within 21 days of becoming aware of the office-holder’s decision.”

[16] The Scottish rules on the other hand contain only one provision and the word

“creditor” is used only once to apply to both sorts of appeals. However, having said that, I did not in any event find the English separation into two provisions as being of assistance, as the same word (“creditor”) is used in both without any indication that it bears a different meaning in 14.8(1) from 14.8(3).

[17] Further, I am not persuaded that the proposition set out by McPherson & Keay should be given effect to in Scotland. Despite their researches, parties were unable to provide me with any other textbook or case which endorsed the proposition. The proposition is derived from a case (*Re a Company no 004539 of 1993*) which is not binding on me. It has little persuasive weight as it is a first instance decision of a single judge of the Chancery Court (Companies Division) and the passage from which McPherson & Keay derive their proposition is *obiter*.

[18] That case concerned Rule 4.70 of the English Insolvency Rules , which provides, as follows:

“(1) At any creditors' meeting the chairman has power to admit or reject a creditor's proof for the purpose of his entitlement to vote; and the power is exercisable with respect to the whole or any part of the proof.

(2) The chairman's decision under this Rule ... is subject to appeal to the court by any creditor or contributory.”

[19] The proposition is derived from the following passage:

“[Mr Steinfeld] argued that since under r. 4.70(2) it is only a creditor or a contributory who can appeal and since Mr Morris is neither and since, in the event, the two Crown departments which are creditors no longer pursue their challenge, then, unless and until the proofs of CV and Stamford Bridge are rejected (and there is no evidence that either has been), those two creditors are entitled under r. 4.70(2) to appeal to this court against the official receiver's decision to admit SB Property's proof for voting purposes and Mr Morris, as liquidator, has no locus to challenge their locus to do so. In my judgment, Mr Steinfeld is correct”

[20] The issue in that passage was not (as in our case) whether there could be an appeal **after** the claim was rejected, but whether there could be an appeal **before** the claim was rejected. Any suggestion in that case that the right to appeal flies off on rejection is *obiter* and was not argued in any detail. In these circumstances I do not find that case to be persuasive.

[21] In my opinion the intention of Parliament in respect of the Scottish rules is to be ascertained by construing the wording of the rules and not by reading into the wording policy considerations which do not arise from the wording. No doubt a policy argument could be made that a person whose claim is rejected should not be entitled to appeal a decision in respect of another person's claim: he has become a stranger to the liquidation and the appeal will involve expense. Equally, no doubt a policy argument could be made that such a person should be entitled to such an appeal: the issues in the appeal against the decision on the other person's claim may (as may be the case in the circumstances of this case) have a bearing on the issues on his appeal in a related claim, and if he unsuccessfully appeals the decision of the other person's claim the cost of that will fall on him as the expenses of the appeal will be awarded against him. The court's task is not to decide on competing policy arguments, but to apply the wording of the rules. There were no documents put before the court which suggested that the policy intention of Parliament in the Scottish rules was to do other than that which is set out in the clear wording of the rule. The intention of Parliament has to be

ascertained through construction of the wording of the rule, and in my opinion, for the reasons set out above, the wording of the rule is clear.

[22] As I have decided this case on the Dean of Faculty's primary submission, I do not require to consider his secondary submissions.

[23] I shall give directions in the terms agreed by the parties, with the inclusion of the directions sought in paragraph 8 and 10 of the prayer and set out above. I shall issue this *ex tempore* opinion in writing and for ease of reference shall attach the directions to the opinion.

Directions

- (1) Notwithstanding the fact that they are not presently in a position to make a distribution to creditors, the liquidators (the "**Liquidators**") of General Services 1 Limited ("**GS1**") and General Services 2 Limited ("**GS2**") are entitled to adjudicate the claims lodged by:
 - (i) MCR Oil Tools LLC ("**MCR**"); and (ii) the Noter ("**SPEX**") in the liquidation of GS1 in accordance with the provisions set out in Rules 7.16 to 7.25 of the Insolvency (Scotland) (Receivership and Winding up) Rules 2018 (the "**2018 Rules**").

- (2) Notwithstanding the terms of Rule 7.19 of the 2018 Rules which provide for an adjudication to be undertaken by reference to accounting periods, the Liquidators are entitled, in the liquidations of GS1 and GS2, to adopt the following procedure:
 - (a) The Liquidators shall fix a date by which MCR requires to intimate all documents and other evidence on which it relies for its claim in each of the liquidations of GS1 and GS2 (the "**MCR Claims**") to the Liquidators, and at the same time intimate the MCR Claims to the solicitors for SPEX. At least 4 weeks' notice will be given to the parties of the date so fixed;
 - (b) SPEX may intimate its reasoned objection(s), if any, to the MCR Claims, together with supporting documents, (the "**SPEX Objections**") if so advised to the Liquidators within 6 weeks of receipt of intimation of the MCR Claims, and at the same time intimate the SPEX Objections to the solicitors for MCR.
 - (c) MCR may intimate any reasoned response to the SPEX Objections, together with any supporting documents (the "**MCR Responses**") to the Liquidators and to the solicitors for SPEX within 6 weeks of receipt of intimation of the SPEX Objections.

- (d) MCR or SPEX may provide any further reasoned response, together with any supporting documents, to the Liquidators and to the solicitors for SPEX or MCR respectively within 4 weeks of the MCR Responses (the “**Supplemental Responses**”).
 - (e) The Liquidators shall use reasonable endeavours to adjudicate on the MCR Claims within 8 weeks of receipt of the Supplemental Responses or as soon as practicable thereafter.
 - (f) The Liquidators may, acting reasonably, extend any of the periods noted above.
- (3) Notwithstanding the terms of Rule 7.19 of the 2018 Rules which provide for an adjudication to be undertaken by reference to accounting periods, the Liquidators are entitled, in the liquidation of GS1 only, to adopt the following procedure:
- (a) The Liquidators shall fix a date by which SPEX requires to intimate all documents and other evidence on which it relies for its claim (the “**SPEX Claim**”) to the Liquidators, and at the same time intimate the SPEX Claim to the solicitors for MCR. At least 4 weeks’ notice will be given to the parties of the date so fixed.
 - (b) MCR may intimate its reasoned objection(s), if any, to the SPEX Claim, together with supporting documents, (the “**MCR Objections**”) if so advised to the Liquidators within 6 weeks of receipt of intimation of the SPEX Claim, and at the same time intimate the MCR Objections to the solicitors for SPEX.
 - (c) SPEX may intimate any reasoned response to the MCR Objections, together with any supporting documents (the “**SPEX Responses**”) to the Liquidators and to the solicitors for MCR within 6 weeks of receipt of intimation of the MCR Objections.

- (d) SPEX or MCR may provide any further reasoned response, together with any supporting documents, to the Liquidators and to the solicitors for MCR or SPEX respectively within 4 weeks of the MCR Responses (the “**Supplemental Responses**”).
 - (e) The Liquidators shall use reasonable endeavours to adjudicate on the SPEX Claim within 8 weeks of receipt of the Supplemental Responses or as soon as practicable thereafter.
 - (f) The Liquidators may, acting reasonably, extend any of the periods noted above.
- (4) The disclosure of certain protected documents and other evidence which may be submitted to the Liquidators by MCR and/or SPEX for the purposes of, *inter alia*, the adjudication of the MCR Claims or the SPEX Claim and any appeal to this court arising therefrom shall be made subject to and in accordance with the [confidentiality] agreement....
- (5) In adjudicating on the MCR Claims and the SPEX Claim, the Liquidators are entitled (insofar as they consider appropriate) to instruct solicitors and counsel to advise them on any legal issues arising, to instruct any experts that they may consider necessary to advise them, including accounting and intellectual property experts and may raise queries with, or seek clarification from, SPEX, MCR or any other person who is otherwise required to provide information under any other rule of law as they consider appropriate, including, without prejudice to the foregoing generality, for the purpose of seeking representations from such persons on any information or material that the

Liquidators intend to rely upon in adjudicating the MCR Claims or the SPEX Claim which has not been disclosed by MCR or SPEX in the adjudication process.

- (6) The Liquidators are entitled to return to Court to seek further orders regarding the adjudication of the MCR Claims or the SPEX Claim should they form the view that further orders are necessary, provided that, in the event that such an application for further orders is necessary, the Liquidators, and the parties, take all reasonable steps to agree appropriate revisions to the timetable set out for the adjudication.
- (7) Following their adjudication of the MCR Claims, the Liquidators will issue a note of their decisions to MCR and to SPEX (the “**MCR Adjudication Decisions**”). The MCR Adjudication Decisions will identify:
 - (a) Whether the MCR Claims have been accepted in whole or in part;
 - (b) If the MCR Claims have been accepted to any extent, the level at which the MCR Claims have been accepted;
 - (c) Brief reasons for the acceptance or rejection of any part of the MCR Claim;
 - (d) If the MCR Claims have been accepted to any extent, a brief explanation of the basis on which the parts of the claim so accepted have been quantified.
- (8) MCR and SPEX, if dissatisfied with the acceptance or rejection of the MCR Claims, are each entitled to appeal to this court within 4 weeks of the date on which the MCR Adjudication Decisions are issued by the Liquidators.

- (9) Following their adjudication of the SPEX Claim, the Liquidators will issue a note of their decisions to MCR and to SPEX (the “**SPEX Adjudication Decisions**”). The SPEX Adjudication Decisions will identify:
- (a) Whether the SPEX Claim has been accepted in whole or in part;
 - (b) If the SPEX Claim has been accepted to any extent, the level at which the SPEX Claim has been accepted;
 - (c) Brief reasons for the acceptance or rejection of any part of the SPEX Claim;
 - (d) If the SPEX Claim has been accepted to any extent, a brief explanation of the basis on which the parts of the claim so accepted have been quantified.
- (10) SPEX and MCR, if dissatisfied with the acceptance or rejection of the SPEX Claim, are each entitled to appeal to this court within 4 weeks of the date on which the SPEX Adjudication Decisions are issued by the Liquidators.