Neutral Citation Number: [2024] EWHC 2978 (Ch)

Case No: CR-2024-002882

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

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

Date: 26 November 2024

Before :

Andrew Twigger K.C. sitting as a Deputy Judge of the High Court

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IN THE MATTER OF KRF SERVICES (UK) LTD (Company No. 11549135)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

(1) KRF SERVICES (UK) LTD
(2) THOMAS PASCAL PIERRE PAILLARDON
(3) KELTBRAY LTD **Applicants**

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JOSHUA RAY (of **CANDEY Ltd.**) for the **First and Second Applicants**
REBECCA PAGE (instructed by **BCL Solicitors LLP**) for the **Third Applicant**

Hearing date: 15 November 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 26 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Andrew Twigger K.C.:

1. On Friday, 15 November 2024, I made an order appointing Mr Anthony Cork and Mr Stephen Cork, partners in Cork Gully LLP, as administrators of KRF Services (UK) Ltd. (**the Company**). This judgment contains my reasons for making that order. References below to "Mr Cork" are to Mr Anthony Cork, and I shall refer to him and Mr Stephen Cork as the "**Joint Administrators**".

2. The Company was incorporated on 3 September 2018. Until recently, its business involved providing management services for the benefit of the family of Dr Viatcheslav Moshe Kantor, a Russian businessman currently residing in Tel Aviv. The Company managed, amongst other things: the family's home at 57 Winnington Road, London, N2 (including the payment of staff and contractors); a substantial development of property at 47-49 Winnington Road; and an art collection.

3. All the shares of the Company are owned by KRB PTC Ltd, a company incorporated in the Isle of Man which acts as trustee of the KR Family Office Trust. Dr Kantor was the settlor of that trust and is one of its beneficiaries.

4. On 6 April 2022 Dr Kantor was designated under regulation 5 of The Russia (Sanctions) (EU Exit) Regulations 2019 (**the Sanctions Regulations**). I understand that on 8 April 2022 similar sanctions were imposed on Dr Kantor by the European Union pursuant to Council Regulation (EU) No. 269/2014. The Company has not itself been designated in the UK or any other jurisdiction, but the imposition of sanctions on Dr Kantor (here and in the EU) has nevertheless had the practical effect of preventing the Company from carrying on its business, as I explain below.

5. Whilst the Company does not accept that Dr Kantor "*owns*", "*holds*" or "*controls*" it (directly or indirectly) within the meaning of regulations 7 or 11 of the Sanctions Regulations (and I make no findings one way or the other in relation to that issue), I understand that HM Treasury's Office of Financial Sanctions Implementation (**OFSI**), regards him as doing so. The reality is that those dealing with the Company, and particularly the Company's bank, have understandably conducted themselves on the basis that the Company is potentially subject to the sanctions regime.

6. The application for an administration order was originally issued on 15 May 2024 (**the Administration Application**). It was stated to be issued by the Company itself and by Mr Thomas Paillardon, in his capacity as the Company's sole director. Mr Paillardon candidly pointed out in his witness statement in support of the application that there is an issue about whether a resolution to make the Administration Application, passed by a board consisting of a single director, amounts to a valid decision by the Company. The other directors of the Company have resigned, and Mr Paillardon says that it has not been possible to find other individuals willing to act as directors, because of the sanctions position.

7. Another difficulty which has arisen because of the designation of Dr Kantor under the Sanctions Regulations is that the Company was unable to obtain funds

to pay counsel in relation to the Administration Application. Such difficulties led to the original hearing listed in July 2024 being adjourned. Continued problems in relation to funding resulted in the Company's solicitors, CANDEY Ltd. (**Candey**), writing to creditors on 29 October 2024, seeking their consent to a further adjournment. This, in turn, prompted an application by Keltbray Ltd. (**Keltbray**), the creditor owed the largest sum by the Company (excluding connected parties), which was not willing to agree to a further adjournment. It applied by application dated 7 November 2024 for permission to appear and be represented at the hearing as a supporting creditor and also, in so far as necessary, to be joined as a further applicant to the Administration Application (**the Keltbray Application**).

8. The involvement of Keltbray, and in particular its representation before me by Ms Rebecca Page of counsel, who prepared a detailed skeleton argument, encouraged the Company not to apply for a further adjournment. The Company was, in the event, represented by Mr Joshua Ray of Candey.

9. I was told that, although (of course) OFSI were not a party to the Administration Application, they were notified of the date of this hearing and were asked to confirm whether they wished to attend, but no response was received. No other creditors or interested parties appeared.

10. The evidence in support of the Administration Application and the Keltbray Application amounted to seven witness statements. The first was from Mr Paillardon, the sole director. The second and third were from Mr Anthony Cork. I also had two witness statements from Mr Duncan Henderson, the partner of Candey with conduct of this matter. There was a witness statement from Mr Vincent Corrigan, a director of Keltbray Holdings Ltd., and a further short statement from Mr Shaul Brazil, a partner of BCL Solicitors LLP, who represent Keltbray.

11. Before turning to the issues, I will briefly set out the legal requirements for making an administration order.

12. As is well known, the provisions in the Insolvency Act 1986 (**the 1986 Act**) dealing with administration are now found in Schedule B1 (**Schedule B1**). Pursuant to paragraph 11 of Schedule B1, there are two preconditions which must be satisfied before the Court may make an administration order:

    i) First, the Court must be satisfied that the company is, or is likely to become, unable to pay its debts. "*Likely*" in this context means "*more probable than not*" (see Re AA Mutual International Insurance [2005] 2 BCLC 8, at [20]-[21]). "*Unable to pay its debts*" has the meaning given by section 123 of the 1986 Act, including that the company is "*unable to pay its debts as they fall due*" (see paragraph 111(1) of Schedule B1).

    ii) Second, the Court must be satisfied that the administration order is reasonably likely to achieve the purpose of the administration. "*Reasonably likely*" in this context means that there is a "*real prospect*", which is not necessarily a greater than 50% chance (see Re European Directories (DH6) BV [2012] BCC 46).

13. The purpose of the administration is governed by paragraph 3 of Schedule B1, which sets out a hierarchy of three alternative objectives:

    i) Rescuing the company as a going concern (**First Objective**);

    ii) Achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration) (**Second Objective**); and

    iii) Realising property in order to make a distribution to one or more secured or preferential creditors (**Third Objective**).

14. Once it is satisfied of the two matters referred to in paragraph 11 of Schedule B1, the Court has a discretion pursuant to paragraph 13(1) whether to grant an administration order, or to make a range of other orders. In the circumstances of this case, one of the principal matters to consider in relation to the exercise of discretion is the impact of the designation of Dr Kantor under the Sanctions Regulations.

15. As a final preliminary matter, I should record that, on the evidence before me, the Company has no secured creditors and there are no outstanding charges registered against the Company. No receiver or administrator has been appointed and no winding up petition has been presented.

16. Against this background, I propose to address the following six issues:

    i) Should Keltbray be permitted to appear and be represented?

    ii) Was the Administration Application validly brought by the Company or Mr Paillardon, and/or should Keltbray be joined as an additional applicant?

    iii) Is the Company unable, or is it likely to become unable, to pay its debts?

    iv) Is the administration order reasonably likely to achieve the purpose of the administration?

    v) Should I exercise my discretion to make an administration order, particularly in the light of the designation of Dr Kantor under the Sanctions Regulations?

    vi) Other terms of the order.

i. Should Keltbray be permitted to appear and be represented and should it be joined as a further applicant?

17. The Keltbray Application sought permission for Keltbray to appear and be represented at the hearing pursuant to r. 3.12(1)(j) of the Insolvency (England and Wales) Rules 2016 (**IR 2016**). The Company and Mr Paillardon (the existing applicants in the Administration Application) confirmed they were

agreeable to this. In my judgment, against the background I have summarised above, it was appropriate for the court to hear from Keltbray, and I accordingly gave permission.

18. I was mindful of the guidance of Neuberger J (as he then was) in Re Farnborough-Aircraft.com Ltd. [2002] EWHC 1224 (Ch) as to the approach to be taken to permitting creditors to heard. There was no risk of any delay or interference in the process if I granted permission in this case. On the contrary, if Keltbray had not applied for permission to be represented, I would have been faced with an application from the Company for a further adjournment, which would have been most unsatisfactory, given the delay which had already occurred since the Administration Application was issued. Moreover, intending no criticism of Mr Ray, I anticipated that it would be of assistance to have the benefit of submissions from Ms Page, who, in the event, took the lead in presenting the issues.

(ii) Was the Administration Application validly brought by the Company or Mr Paillardon, and/or should Keltbray be joined as an additional applicant?

19. Mr Paillardon signed a board resolution dated 14 May 2024 determining that the Company would apply for an administration order and that he would, as director, have authority to take all actions and execute all documents needed, including applying to the Court in his own name and/or in the name of the Company. As mentioned above, Mr Paillardon properly drew the court's attention to the potential difficulty that he is now a sole director, all the other directors having resigned and no other individuals being willing to take on the role in the light of the designation of Dr Kantor. The question is whether a resolution of a single director is valid in these circumstances.

20. It may be asked whether it is necessary to resolve this question, since no one has suggested that there is any reason why Keltbray does not have standing to apply for an administration order as a creditor pursuant to paragraph 12(1)(c) of Schedule B1, and Keltbray has expressed a willingness to be joined to the Administration Application as a third applicant (in addition to the Company and Mr Paillardon), in so far as necessary. Ms Page was however right, in my judgment, to say that, if an administration order is made solely on the application of Keltbray, there might subsequently be an argument about the relevant time for the "*onset of insolvency*" under section 240 of the 1986 Act. Would it be the date on which the Administration Application was originally issued (15 May 2024), or the date on which Keltbray applied to be joined as the third applicant (7 November 2024)? With a view to reducing the chances of such a debate arising, I shall decide whether Mr Paillardon's resolution of 14 May 2024 was valid.

21. The company has adopted the Model Articles in full, without modification. These include the following:

    i) Article 7 provides for directors to take decisions collectively as follows:

> "***7.***—*(1) The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with article 8.*
> *(2) If—*
> *(a) the company only has one director, and*
> *(b) no provision of the articles requires it to have more than one director,*
> *the general rule does not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.*"

ii) Article 8 enables decisions of directors to be taken unanimously by any means.

iii) Articles 9 to 13 concern directors' meetings, of which Article 11 provides:

> "***11.***—*(1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.*
> *(2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must never be less than two, and unless otherwise fixed it is two.*
> *(3) If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision—*
> *(a) to appoint further directors, or*
> *(b) to call a general meeting so as to enable the shareholders to appoint further directors.*"

22. Plainly, if the validity of the resolution signed by Mr Paillardon is governed by Article 11, it is invalid, since that Article prohibits a single director from making any decision other than to appoint further directors, or to call a general meeting to enable further directors to be appointed. Ms Page and Mr Ray submitted, however, that the effect of Article 7(2) is expressly to disapply the provisions relating to directors' decision-making, which include Article 11, when there is a sole director. That is subject, of course, to there being no provision of the articles requiring there to be more than one director, but (it was submitted) there is no such provision in the Model Articles. If Article 11(2) were to be read as a requirement for more than one director, Article 7(2) could never have effect (unless, perhaps, the Company adopted some modified version of the Model Articles saying that Article 7(2) was to apply). That is unlikely to have been the intended effect of the Model Articles.

23. I was referred to two authorities on the point. The first was Re Fore Fitness Investments Holdings Ltd. [2022] EWHC 191 (Ch), which concerned an unfair prejudice petition. The sole remaining director purported to resolve that the company should bring a counterclaim, but the petitioner contended that a sole director could not validly reach such a decision. Importantly, the Articles were

a mix of the Model Articles and bespoke articles, one of which provided that the quorum for board meetings was two directors. The Deputy Judge, Mr Richard Farnhill, held that there had been no valid decision by the sole director because a provision in the articles requiring there to be at least two directors to constitute a quorum was logically a requirement for the company to have two directors, so that Article 7(2) did not apply.

24. The second case was Re Active Wear Ltd. [2023] BCC 14, in which there appears to have been an out-of-court appointment of administrators by a sole director and the court was asked to rule on the validity of that appointment. The company had only ever had a single director, Ms Rabate. It had adopted the Model Articles, without any modification. The Deputy Judge, Mr John Martin KC, held that a standard form resolution executed by Ms Rabate alone was valid and effective to appoint administrators. In paragraph 12 of his judgment, he said that, where a company has only one director, as permitted by section 154(1) of the Companies Act 2006, and no provision of the articles requires it to have more than one director, as was the case under the Model Articles, the unambiguous effect of Article 7(2) was that it prevails over the requirement for a quorum of at least two in Article 11(2).

25. Mr Martin reviewed the Fore Fitness case and considered that the critical factor in the decision had been the existence of the bespoke article, which Mr Farnhill had interpreted as requiring there to be at least two directors. Article 7(2) is expressed not to operate where there is such a provision. Where, however, the Model Articles have been adopted without modification, to treat the Article 11(2) as if it contained a requirement that there be at least two directors would deprive Article 7(2) of any effect.

26. I agree with this analysis, which supports the submissions made to me.

27. The potential wrinkle in this approach is that Mr Martin went on in paragraph 18 of his judgment in Active Wear to express the view that, "*there is an apparent tension between Article 7(2) and Article 11(3) where the number of directors falls to one from a higher number; but in my judgment in that situation it is Article 11(3) that applies, Article 7(2) applying only where there has never been a greater number of directors than one.*" The facts in Active Wear were that there had only ever been a single director, whereas in the case before me the Company has had more than one director at certain stages of its life. If Mr Martin's view in paragraph 18 of his judgment in Active Wear is correct, therefore, Mr Paillardon cannot rely on Article 7(2).

28. Mr Martin's view is plainly *obiter*: it was not necessary for him to reach it in order to decide the case before him, as he accepted at the beginning of paragraph 18 ("*it is strictly unnecessary for me to say more…*"). In my judgment, there is no tension of the kind he identified. The conditions for Article 7(2) to apply are, first, that the company "*only has*" one director and, second, that "*no provision of the articles requires it to have*" more than one director. The first condition is expressed in the present tense. The Company does only have one director, Mr Paillardon, so that condition is satisfied. The second condition depends on whether there is a provision of the articles requiring more than one director. Part of the *ratio* of Mr Martin's decision is that Article 11 is not a

provision of the articles which requires the Company to have more than one director. It follows that the second condition is also satisfied in this case. Accordingly, Mr Paillardon "*may take decisions without regard to **any** of the provisions of the articles relating to directors' decision-making*" (emphasis added). Those provisions include all of Article 11, including Article 11(3).

29. Thus, the fact that the Company had more than one director in the past is irrelevant. In the period when there was more than one director, the quorum for directors' meetings would have been two as a result of Article 11(2), unless the directors resolved to fix it at a greater number (and there is no evidence of such a resolution ever having been passed). Article 11(3) limits the powers of the directors if their number falls below "*the quorum required.*" So, if the quorum had, for example, been fixed at three and there were only two directors, Article 11(3) would be engaged. But where Article 7(2) applies, as it does in the case before me, Article 11 as a whole is disapplied. Mr Farnhill in the Fore Fitness case and Mr Martin in the Action Wear case considered that this gave rise to an oddity, or a tension. But in my judgment, it is the inevitable consequence of Parliament permitting a private company to have a single director. There is nothing in section 154 of the Companies Act 2006 to prevent a company having a single director merely because it had a greater number of directors in the past. In my judgment, the Model Articles enable the Company to continue to function in those circumstances, as one would expect.

30. For these reasons, I conclude that the resolution passed by Mr Paillardon on 14 May 2024 was a valid and effective decision of the Company to apply for an administration order.

31. In case I am wrong about that, I was asked also to consider making the administration order on three alternative bases:

    i) First, Mr Ray's skeleton argument suggested that, even if there were no valid decision by the Company, so that it could not apply under paragraph 12(1)(a) of Schedule B1, nevertheless Mr Paillardon could apply as a director under paragraph 12(1)(b).

    ii) Secondly, Ms Page and Mr Ray submitted that, in the case of an application to the court for an administration order (as opposed to an out-of-court appointment), the absence of a valid resolution by the Company was not an absolute bar to the making of an order. The court has a discretion whether to make an order or not, and the absence of a valid resolution is merely one of the matters which the Court must take into account when exercising that discretion.

    iii) Thirdly, as indicated above, Ms Page submitted that there was no dispute that Keltbray is a creditor of the Company and, in so far as necessary, Keltbray should be joined to the Administration Application so that an order could be made on the basis of an application pursuant to paragraph 12(1)(c).

32. The first and second of these alternative bases face legal difficulties. Ms Page and Mr Ray relied on the decisions of Marcus Smith J in Re Brickvest Ltd.

[2019] EWHC 3084 (Ch) and Fancourt J in Re Nationwide Accident Repair Services Ltd. [2020] EWHC 2420 (Ch). Whilst those decisions do support the arguments made to me, I was properly referred to the subsequent decision of Mr David Halpern KC in Re LYHFL Ltd. [2023] EWHC 2585 (Ch). Mr Halpern analysed several authorities, including the decision of the Court of Appeal in Re BW Estates Ltd. (No 2) [2018] Ch 511, which cast doubt on aspects of the decisions in Brickvest and Nationwide.

33. Ms Page and Mr Ray nevertheless submitted that the decision in LYHFL left a route open for me to adopt the approach taken in Brickvest and Nationwide, and that it could be distinguished on various grounds. In my judgment, however, this is not a case where it is necessary or appropriate for me to attempt to resolve these issues, especially where the application is effectively unopposed, and I have heard no argument in opposition to it. So far as the application by the Company and Mr Paillardon is concerned, I prefer to base my decision on the reasoning in the Active Wear case referred to above, which I consider to be correct (subject to the point in paragraph 18 of the judgment in Active Wear addressed above).

34. In case I am wrong about that, I agree that there is utility in determining whether there is an alternative basis for making an administration order. But, in the circumstances of this case, there is no need to resort to alternative bases which involve complex and potentially controversial legal problems. The third alternative basis on which it was submitted that I can be satisfied that there is a valid application before the court appears to me to be entirely straightforward and uncontroversial. Keltbray is a creditor and entitled to apply for an administration order in its own right. It is willing to do so and has applied to be joined as an applicant for that purpose. The Company supports that application. I, therefore, give Keltbray permission to be joined as the Third Applicant and will make the order on the application of all three applicants jointly.

35. For the avoidance of doubt, I do not consider that the theoretical risk of a later argument about the relevant time for the "*onset of insolvency*", to which I referred above, is sufficiently material to justify attempting to resolve the potentially controversial alternative legal arguments I have mentioned.

(iii) Is the Company unable, or is it likely to become unable, to pay its debts?

36. Ms Page and Mr Ray both rely principally on evidence which they submit establishes that the Company is cash-flow insolvent; in other words, it is unable to pay its debts as they fall due.

37. So far as the evidence is concerned, the Company's accountants are no longer providing services to the Company because of restrictions imposed by their regulatory body in relation to sanctioned clients. I understand that the figures referred to below are based on an unaudited general ledger and management accounting data as at 25 April 2024, together with an "*aged creditor report*" prepared up to 15 March 2024, which was subsequently reviewed by Rotco S.a.r.l, a Luxembourg entity which employs Mr Paillardon. He regards this

latter document as still representing a fair reflection of the Company's assets and liabilities.

38. In addition, Mr Henderson (of Candey) explains in his statement that he discussed the Company's current financial position with Mr Paillardon and Mr Cork on 5 November 2024 (i.e. the week before the hearing) and, subject to some immaterial adjustments, their view was that the assets and liabilities remain largely unchanged. I have no reason to doubt that evidence.

39. The Company's activities were formerly funded by other entities connected to the Kantor family. Broadly speaking, domestic services were charged to a sister company, KRF Services Guernsey Ltd. (**KRFG**), which in turn recharged costs to Dr Kantor; property project development costs were charged to a nominee company belonging to Dr Kantor, Hillgrove Investments Ltd. (**Hillgrove**), which owns the property under development in Winnington Road; and administration costs for two art collections were charged either to Blenmore Developments Ltd., a further nominee company for Dr Kantor (**Blenmore**), or to Rockaby Investments Ltd., another company owned or controlled by a trust of which Dr Kantor is a beneficiary (**Rockaby**).

40. The effect of the designation of Dr Kantor pursuant to the Sanctions Regulations and the sanctions imposed on him by the EU has been that, amongst other things:

    i) The Company's three active bank accounts at ING Luxembourg S.A. (**ING**) have been frozen;

    ii) The Company's parent, KRB PTC Ltd, has become inactive and has ceased providing trustee services;

    iii) Similarly, KRFG has become inactive;

    iv) The directors of Hillgrove have become inactive; and

    v) The Company formerly had around 30 employees, but no longer has any, the last having been made redundant recently.

41. As a result of these factors, the Company has, for some time, been unable to pay the majority of its outstanding debts of over £7.7 million, as at 25 April 2024. Some limited licences have been granted by OFSI for specific purposes, but these are too narrow in scope to enable the Company to pay most of its creditors. The process of applying for licences is complex and prolonged. There are limited grounds for licences to be granted. It can take months for a licence to be issued by OFSI and, even if a licence is issued, it can take significant time to persuade banks to make payments.

42. The Company's situation is further complicated because its bank accounts are based in Luxembourg. ING will only permit payments from the Company's accounts to UK beneficiaries against separate licences from the Luxembourg authorities (the Ministry of Finance) and OFSI. Any payment requires detailed negotiations with ING.

43. In particular, the Company has been unable to pay the debt of around £2.2 million, which is admitted to be due to Keltbray. Keltbray's business is construction, engineering and infrastructure solutions. Since late 2020 it has been the main contractor engaged by the Company to build a home for Dr Kantor at 47-49 Winnington Road, London. This has been a major construction project, in connection with which the Company had already paid over £12 million by 6 April 2022, when works ceased as a result of the designation of Dr Kantor pursuant to the Sanctions Regulations. Despite the cessation of works, continuing costs were incurred for plant and equipment remaining at the site and ongoing maintenance and inspections. Pursuant to an agreement between the parties in respect of these costs, Keltbray issued an invoice for £2,245,805 on 24 April 2024, which was due for payment on 24 May 2024, and which remains unpaid.

44. In addition, on 15 February 2024 Flight Centre (UK) Ltd. (**Flight Centre**) obtained a County Court money judgment against the Company in the sum of a little over £6,000. Based on this judgment debt, a Writ of Control was issued in March 2024 and a Notice of Enforcement was received on 2 April 2024. Candey have written to Flight Centre asking it to suspend enforcement, but it has not committed to do so.

45. Mr Paillardon says that he believes the Company is unable to pay its debts, both because it can no longer obtain funds from Dr Kantor, KRFG, Hillgrove, Blenmore or Rockaby, and because it has no access to the funds frozen in its bank account, other than by means of a complex and time-consuming licence process.

46. Mr Cork says that he has taken steps to enable him to reach his own view and, based on the work he has so far been able to do, the Company is insolvent on a cash-flow basis, because major debt obligations are in default. Moreover, there are over 50 different unpaid creditors, giving rise to a high risk of enforcement action, and Mr Cork is not aware that the Company has any revenue-generating business, nor any significant assets apart from sums owed by connected parties and the frozen cash held in the ING accounts. The substantial sums owed by connected parties cannot, in practice, be recovered without appropriate licences being in place and the co-operation of Dr Kantor, although it is possible that enforcement action could be taken against the property owned by Hillgrove.

47. Mr Cork also considers that the Company is potentially insolvent on a balance sheet basis, unless it can secure both the recovery of debts from connected entities and the co-operation of Dr Kantor in agreeing to subordinate his claims as a creditor. So far as the balance sheet is concerned:

    i) As at 25 April 2024, the Company had liabilities in excess of around £7.7 million, of which around £4.5 million was owed to Dr Kantor and around £3.2 million was owed to creditors with no connection to the Kantor family (including the £2.2 million owed to Keltbray).

    ii) At the same date, the Company had assets totalling around £10 million, including around £1.5 million in cash (which is frozen) and around £7.8 million being receivables owed by connected parties. These include

KRFG, which owed around £3.4 million, and Hillgrove, which owed around £4.1 million.

iii) Thus, although the Company theoretically has net assets exceeding £2 million, the bulk of its assets are sums owed by connected parties, which are difficult to realise in practice because of the sanctions. Hillgrove would have to sell assets or obtain funding from related parties, and both those steps would require licences, which may take many months to obtain or not be forthcoming at all. KRFG is totally reliant on connected party funding, with the same difficulties. Even if licences could be obtained to use all the cash to pay unconnected creditors, that will not result in those creditors being paid in full.

48. Taking all this evidence into account, I consider that the Company is unable to pay its debts as and when they fall due, so that the condition in paragraph 11(a) of Schedule B1 is satisfied. In practice, the Company is unable to pay its many creditors without obtaining licences and the process of obtaining them is long and uncertain. It is not necessary to decide whether the Company is also insolvent on a balance sheet basis.

(iv) Is the administration order reasonably likely to achieve the purpose of the administration?

49. Mr Cork says that the First Objective, rescuing the company as a going concern, is unlikely to be achieved in practice, because of the effect of the sanctions. The Company cannot currently operate because it has no funds and cannot realistically obtain any from the parties who formerly funded it. Borrowing or refinancing is impractical. The Company will never be able to return to operating in the way it did before the imposition of sanctions on Dr Kantor, unless those sanctions are rescinded. It would be unsafe to assume that might happen in the foreseeable future.

50. The Second Objective is achieving a better result for the Company's creditors as a whole than would be likely if the company were wound up. Mr Cork considers that this objective is likely to be met, if the Joint Administrators can successfully implement four steps, which he describes in paragraph 16 of his first statement as follows:

> "*16.1 We want to bring the Company's remaining cash reserves into the UK (they are currently banked in Luxembourg).*
>
> *16.2 We want to collect receivables/debts from connected debtor companies KRF Guernsey Ltd and Hillgrove Investments Ltd, under licenses which we expect will need to be obtained from relevant competent authorities.*
>
> *16.3 We want to discuss with major creditors whether there is scope for reducing the size of their claims, and also whether if*

> *needed Dr Kantor would be willing to subordinate his claims to those of unconnected creditors.*
>
> *16.4 We will repay the Company's creditors so far as the Company's assets permit and if licensed by OFSI.*"

51. These steps can only lawfully be achieved if OFSI grants a licence, or licences, to the Joint Administrators to enable them to make and receive payments and to deal with the Company's assets. In his second statement, Mr Cork explained that he submitted a licence application to OFSI on 17 May 2024, which has been assigned the reference number INT/2024/4748516. The evidence is that OFSI has not formally communicated about the application, but that it remains under consideration. Mr Henderson of Candey considered there were good prospects of OFSI granting such a licence, if an administration order was made. I was shown reports of decisions in similar cases in which administration orders were made (to which I refer in more detail below) and I was told that there is no evidence of OFSI having refused a licence for insolvency officeholders to deal with a sanctioned company's assets.

52. I am grateful to Mr Ray for drawing to my attention a very recent development which provides further confidence for the view that OFSI is likely to grant a licence to the Joint Administrators. The day before the hearing (i.e. 14 November 2024), the Sanctions (EU Exit) (Miscellaneous Amendments) (No. 2) Regulations 2024 (SI 2024 No. 1157) were laid before Parliament (**Amendment Regulations**). The Amendment Regulations make amendments to the Sanctions Regulations which, so far as material, will come into force on 5 December 2024. These include the introduction of a new Part 1ZB into Schedule 5 of the Sanctions Regulations, which is concerned with the grant of licences. Part 1ZB consists of a single paragraph 9DD, which is headed "*Insolvency*" and which provides new grounds on which a licence may be granted.

53. Paragraph 9DD(1) provides that a licence may be granted:

> "*To enable anything to be done in connection with—*
>
> *(a) any insolvency and restructuring proceedings relating to an insolvent person,…*
>
> *provided that any payments made directly or indirectly to a designated person, or to a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person, are credited to a frozen account.*"

54. Under paragraph 9DD(2)(a), *"insolvency and restructuring proceedings"* includes the regimes and proceedings set out in Parts A1 to 6 of the 1986 Act, thus including Part II (administration).

55. Paragraph 5.16(b) of the Explanatory Memorandum accompanying the Amendment Regulations explains that the latter create:

> "*…a new insolvency licensing purpose. This will allow OFSI to license various payments and other activity made in relation to insolvency, restructuring, and related proceedings, provided that any payments made directly or indirectly to a* [Designated Person] *are credited to a frozen bank account. Insolvency is an area where sanctions may create adverse consequences for non-designated persons. For example, a non-designated person may be impacted where it is a creditor of an insolvent company, and the insolvency proceedings cannot be progressed as a fellow creditor is a designated person. Existing purposes are not always sufficient to license activity which relates to insolvency proceedings therefore this new purpose provides a dedicated basis for such activity.*"

56. The introduction of a new licensing purpose specifically aimed at insolvency regimes, including administration, suggests that, as one might expect, OFSI intends to licence administrators to carry out their statutory functions in the normal way, subject to ensuring that payments are not made directly or indirectly to designated persons or entities they control. Mr Ray told me that the Joint Administrators would be writing to OFSI with a view to amending their licence application to include a licence under the new paragraph 9DD, once it comes into force.

57. I was shown no evidence suggesting that there was any reason to think that an appropriate licence, or licences, will not be granted by OFSI in due course. If that happens, Mr Cork considers that administration will produce a better result for creditors than a winding up because it will be quicker and easier to realise the Company's claims against Hillgrove and KRFG, and a higher value could be realised.

58. Mr Cork explains that the Kantor family needs someone to provide the services which the Company used to provide, such as managing the properties in Winnington Road and the valuable art collection, and this is likely to be easier to achieve if the Company is able to support a transition of those services to a new provider. As he puts it, "*We expect Hillgrove, KRFG and the trustees or other representative or administrative figures who, we understand, control substantial parts of the Kantor family wealth will be better motivated to pay off Hillgrove's and KRFG's debts to the Company in return for the* [Joint Administrators'] *support with that transaction.*"

59. On this basis, if licences are obtained and the Joint Administrators achieve most or all of the four steps outlined above, they consider they will be able to pay unsecured creditors in full, compared with a dividend of 17 pence in the pound in the case of liquidation. Even if there is only a 50% recovery from Hillgrove, no recovery from KRFG and Dr Kantor declines to subordinate his claims to those of the unconnected creditors, a draft Estimated Outcome Statement has been prepared which indicates that unsecured creditors will receive a dividend

of around 42 pence in the pound, rather than the 17 pence in the pound achievable in a liquidation.

60. Mr Cork also considers the Third Objective is reasonably likely to be achieved, namely the realisation of property to make a distribution to one or more preferential creditors. This is because debts are owed to a former employee and to HMRC, who would rank as preferential creditors and to whom it is reasonably likely that a distribution can be made.

61. For all these reasons, I was satisfied that an administration order was reasonably likely to achieve the purpose of the administration, so that the condition in paragraph 11(b) of Schedule B1 is satisfied. It is reasonably likely that OFSI will grant the licences necessary to enable the Joint Administrators to take the four steps described above, which are reasonably likely to achieve a better outcome for the company's creditors than would be likely if the Company were wound up.

(v) Should I exercise my discretion to make an administration order, particularly in the light of the designation of Dr Kantor under the Sanctions Regulations?

62. I was satisfied that the Company is not viable as matters stand, because of the sanctions regime, and that creditors would be best served by the appointment of the Joint Administrators. They were likely to receive more, quicker, if an order was made. The Joint Administrators confirmed on 6 November 2024 that they remained willing to act. These were obviously all factors in favour of exercising my discretion to make an order.

63. The factor which caused me to hesitate was the impact of the Sanctions Regulations. The draft order I was asked to make contained a recital to the effect that the court was satisfied that the Administration Application and the order itself did not breach regulations 11 to 15 and 19 of the Sanctions Regulations. The court could not, of course, have made an order if it were not so satisfied. This, however, required careful consideration of the relevant provisions.

64. The Sanctions Regulations are made pursuant to section 1(1) of the Sanctions and Anti-Money Laundering Act 2018 (**SAMLA**). Section 3(1) of that Act permits regulations which impose prohibitions for the purpose of, amongst other things, "*(a) freezing funds or economic resources owned, held or controlled by designated persons*" and "*(d) preventing funds or economic resources from being made available to, or for the benefit of … designated persons.*"

65. "*Funds"* and *"economic resources"* are defined in section 60 as follows:

> "*(1) In this Act "funds" means financial assets and benefits of every kind, including (but not limited to)—(a) cash, cheques, claims on money, drafts, money orders and other payment instruments; (b) deposits, balances on accounts, debts and debt*

> *obligations; (c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivative products; (d) interest, dividends and other income on or value accruing from or generated by assets; (e) credit, rights of set-off, guarantees, performance bonds and other financial commitments; (f) letters of credit, bills of lading and bills of sale; (g) documents providing evidence of an interest in funds or financial resources; (h) any other instrument of export financing.*
>
> *(2) In this Act "economic resources" means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.*"

66. Regulation 11 is headed "*Asset-freeze in relation to designated persons*" and provides, so far as material for present purposes:

> "*11.—(1) A person ("P") must not deal with funds or economic resources owned, held or controlled by a designated person if P knows, or has reasonable cause to suspect, that P is dealing with such funds or economic resources.*
>
> *(2) Paragraph (1) is subject to Part 7 (Exceptions and licences).*
>
> *(3) A person who contravenes the prohibition in paragraph (1) commits an offence.*
>
> *(4) For the purposes of paragraph (1) a person "deals with" funds if the person—*
>
> *(a) uses, alters, moves, transfers or allows access to the funds,*
>
> *(b) deals with the funds in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination, or*
>
> *(c) makes any other change, including portfolio management, that would enable use of the funds.*
>
> *(5) For the purposes of paragraph (1) a person "deals with" economic resources if the person—*
>
> *(a) exchanges the economic resources for funds, goods or services, or*
>
> *(b) uses the economic resources in exchange for funds, goods or services (whether by pledging them as security or otherwise)…*"

67. Regulations 12 to 15, in brief outline, prohibit a person from making funds or economic resources available (directly or indirectly) to a designated person, or making them available to any person for the benefit of a designated person.

68. Regulation 19 is an anti-circumvention provision. It prohibits a person from intentionally participating in activities, knowing that the object or effect of them is (whether directly or indirectly) to: (a) circumvent any of the prohibitions in regulations 11 to 18; or (b) enable or facilitate the contravention of any such prohibition.

69. Ms Page (supported by Mr Ray) submitted that I could be satisfied that the Administration Application and the order itself did not breach any of these regulations, for several reasons, which I would summarise as follows:

i) Parliament is to be taken to have been aware of the 1986 Act when it enacted SAMLA, and the abrogation or curtailment of the statutory right to apply for the appointment of an administrator would require unambiguous wording in SAMLA, which does not appear; wording in subordinate legislation is not enough.

ii) The Court of Appeal decided in PJSC Bank v Mints [2024] KB 559 that the Sanctions Regulations had not been intended to impinge on the right of access to the court for an effective civil remedy and fair trial and that it was not a breach of the Sanctions Regulations for judgment in a civil claim to be entered in favour of a designated person; the position is all the stronger in relation to an application for an administration order, because such orders provide a statutory class remedy for the protection of creditors as a whole and, in contrast to civil proceedings, the order appointing an administrator does not provide any financial remedy at all.

iii) It is the court which appoints administrators, but the court is not a "*person*" within the meaning of regulations 11 to 15 or 19. This argument was considered in favourable terms by Cockerill J at first instance in PJSC Bank v Mints [2023] EWHC 118 (Comm) [144]-[148], although she did not ultimately decide it. The Court of Appeal did not consider it necessary to decide the point.

iv) The appointment of an administrator does not result in any change in the legal ownership of the assets of a company which could be said to be a breach of regulation 11.

v) The mere appointment of administrators does not, of itself, involve dealing with any "*funds*" or "*economic resources*" owned, held or controlled by Dr Kantor or the Company. Nor does the Court by making the appointment itself make "*funds*" or "*economic resources*" available "*to*" a designated person (or connected person) or "*for the benefit of*" a designated person.

vi) The appointment of administrators by the court does not have the effect of circumventing the prohibitions in regulations 11 to 15.

vii) The Joint Administrators have applied for a licence from OFSI to enable them to take all necessary steps.

viii) Administrators have been appointed in at least three known cases in which the Sanctions Regulations were potentially applicable: Re Sberbank CIB (UK) Ltd [2022] EWHC 1059; Re VTB Capital Plc [2022] BCC 1049; and Re CargoLogicAir Ltd [2022] EWHC 3316 (Ch).

70. It is convenient to deal with submissions (i) and (ii) together, then to deal with (iii), (iv) and (v) together, then to deal with (vi), (vii) and (viii) together.

Submissions (i) and (ii): the right of access to the court

71. It is helpful to begin consideration of these arguments with an analysis of the Court of Appeal's decision in Mints, which is currently the leading case on the effect of the Sanctions Regulation on litigation, although I understand that permission has been granted for an appeal to the Supreme Court. It concerned substantial claims brought by two state-owned Russian banks. Before the trial took place, one of the claimant banks was designated under the Sanctions Regulations. Several of the defendants applied for the proceedings to be stayed on various grounds, including that the Sanctions Regulations made it unlawful for judgment to be entered in favour of a designated person. Cockerill J dismissed that application and the Court of Appeal upheld her decision.

72. The judgment of Sir Julian Flaux C, with which Popplewell and Newey LJJ agreed, explains that the right of access to the court is a fundamental common law right, which comprises not only the right to commence proceedings, but also the right to have the claim adjudicated upon by the court. Then, at paragraphs 179 to 180, he said this:

> "*It is common ground that the so-called principle of legality is a principle of statutory construction under which fundamental common law rights such as the right of access to the court can only be curtailed if that is clearly authorised by primary legislation. Although the words in the statute which curtail the right need not be express and can be implicit, they must be clear and unambiguous. Where there are no express words (as it is accepted that there are not in SAMLA) the fundamental right of access to the court will only be curtailed if that is the necessary implication from the express words…*
>
> *… even if a statute contains a provision authorising intrusion on the right of access to the courts, it will be interpreted as authorising only such intrusion as is reasonably necessary to fulfil the objective of the provision in question, in other words the minimum required interference.*"

73. Sir Julian Flaux C rejected the various arguments which had been made to the effect that the principle of legality was inapplicable on the facts of the Mints case. As part of his discussion of the second of those arguments he said (in paragraph 184) that the restriction in section 38 of SAMLA on the right of access to the court in respect of any judicial review of a decision to designate a person indicated that, "*Parliament did not intend to restrict the right of access*

to the court other than in that narrow respect in relation to judicial review of a decision to designate."

74. He then analysed regulations 11 and 12 in paragraphs 197 to 213. He concluded, first, that a cause of action was not a "*fund*" within the meaning of section 60 of SAMLA. In the course of addressing that point, he said at paragraph 198 that, if a cause of action were a fund, the issue of a claim form or the pursuit of proceedings would be a "*use*" of the fund, or a change in its character, which is prohibited under regulation 11(4) (I understand Sir Julian Flaux C's reference to regulation 11(3) to be a slip). That conflicted with the defendants' position that merely commencing or pursuing proceedings was not a breach of sanctions and that it was only the entry of judgment which was prohibited.

75. Next, Sir Julian Flaux C agreed with the judge that a cause of action was an "*economic resource*". He nevertheless rejected the submission that the doctrine of merger, by which a cause of action ceases to exist and is replaced by a judgment debt, had the effect that the entry of judgment involved "*making funds available*" in breach of regulation 12. Amongst other reasons, Sir Julian Flaux C said (at paragraph 202) that "*the words 'make funds available' are simply not apt to describe the exercise by the court on one of its prime judicial functions in administering justice, of entering judgment on a valid cause of action.*"

76. Sir Julian Flaux C said he had reached his conclusion about the meaning of the words "*making funds available*" irrespective of the principle of legality. The application of that principle, however, put the matter beyond argument. He said (at paragraph 203), "*The words 'making funds available' are capable of more than one meaning for the reasons I have given, so that the words of section 3(1)(d) of SAMLA are not a clear and unambiguous prohibition on the court entering a money judgment on a valid cause of action.*"

77. Sir Julian Flaux C cited in support the judgment of Arden LJ (as she then was) in R v R [2016] Fam 153, a case concerning an order requiring a divorced husband who was subject to sanctions to make maintenance payments to his former wife into her account with a Russian bank. Arden LJ said, "*It would be contrary to the wife's fundamental right of access to court to prevent her from obtaining the valid and effective decision of the court in a member state as to the maintenance to which she was entitled, unless that right was clearly taken away by the EU Regulation.*" I note that, earlier in his judgment in Mints (at paragraph 140) Sir Julian Flaux C had also cited Ryder LJ in the R v R case, who said "*I agree with Briggs LJ that it is no part of the sanctions regime to prevent judges in the EU from making regular orders in favour of persons who are entitled to seek the court's determination of an issue within the competence of that court.*"

78. Sir Julian Flaux C also rejected the argument that the entry of judgment involved "*using economic resources in exchange for funds*" in breach of regulation 11(5)(b). That regulation contemplated retaining an asset but using it in some way, for example by way of pledge, in order to obtain funds. There was no such exchange involved in the doctrine of merger. The court would not receive anything in exchange for the cause of action. Moreover, "*the words 'dealing*

with' are simply not apt to describe the exercise by the court of its judicial function of entering judgment on a valid cause of action" (paragraph 208).

79. Sir Julian Flaux C applied similar reasoning to the words "*dealing with*" as he had applied to "*making available*", saying (at paragraph 209) that they were capable of more than one meaning, but SAMLA did not contain any clear and unambiguous prohibition on the court entering a money judgment. Any prohibition was to be found only in the Sanctions Regulations, rather than in the primary legislation, so the fundamental right of access to the court is not curtailed. If it was necessary to have resort to the principle of legality, the words of the regulation should be "*read down and construed so as not to curtail the right of access to the court including to have a claim adjudicated upon and if successful, to obtain a money judgment.*"

80. Finally, Sir Julian Flaux C considered whether, if he had decided that the entry of a money judgment was in breach of sanctions, a declaratory judgment, or judgment on liability with quantum deferred until sanctions were lifted, would be a circumvention of the prohibitions in regulations 11 or 12. He held that there would be no such circumvention, because a declaratory judgment or judgment on liability would be a lawful way of vindicating the fundamental right of access to the court, even if entry of a money judgment would be unlawful.

81. The Mints case concerned whether it was a breach of sanctions for a money judgment to be entered in favour of a designated person. There are obviously important differences between that question and the question whether it is a breach of sanctions for administrators to be appointed. Most obviously, the conclusions that a cause of action is not a "*fund*" and that the entry of a money judgment does not involve "*making funds available*" have little (if any) bearing on the appointment of administrators. Nevertheless, in my judgment the application of Sir Julian Flaux C's reasoning in Mints leads inevitably to the conclusion that the making of an administration order cannot involve a breach of the Sanctions Regulations.

82. First, the defendants in Mints conceded that commencing or pursuing proceedings right up to closing submissions at trial would not be a breach of sanctions (see paragraph 198 of the judgment). Sir Julian Flaux C plainly considered that concession was rightly made. He emphasised that the right of access to the court is a fundamental common law right and held that Parliament did not intend SAMLA to restrict that right, other than in a narrow respect in relation to judicial review of a decision to designate. In my judgment, that at least disposes of any suggestion that the Administration Application by itself could be a breach of the Sanctions Regulation. I agree with Ms Page that the position of the applicants in the case before me is even stronger than that of the claimants in Mints. The claimant in Mints was a designated person, whereas there is no suggestion that Mr Paillardon or Keltbray are designated persons; nor is the Company itself designated, although it is said to be "*owned, held or controlled*" by a designated person. Moreover, the claimant designated person in Mints was seeking an order for a payment of money to it, but these three applicants are asserting a statutory right to a remedy for the protection of

creditors as a class, many of whom have no connection with any designated person.

83. The next question is whether the making of an administration order is a breach of the Sanctions Regulations. Whilst the decision in Mints does not assist with whether regulations 11 to 15 could be interpreted as prohibiting the making of such an order, it nevertheless establishes that, even if the regulations do contain clear wording prohibiting such an order, a prohibition found only in the Sanctions Regulations, rather than in the primary legislation, could not curtail the fundamental right of access to the court. The apparent prohibition in the Sanctions Regulations would have to be "*read down and construed so as not to curtail the right of access to the court.*"

84. The decision in Mints also establishes that the right of access to the court is not limited to commencing and pursuing proceedings but includes having a claim adjudicated upon. In my judgment, there is no relevant distinction for these purposes between having a cause of action adjudicated on, with the consequent entry of a money judgment, and having an application for an administration order adjudicated on, with the consequent making of an administration order. In both cases the court considers whether the litigant is entitled to the relief sought and, if so, it grants that relief. In both cases the right of access to the court would be "*a hollow one*" (as Sir Julian Flaux C described it) if the court could not make the order which it had determined should otherwise be made.

85. In my judgment, therefore, Ms Page was correct to submit that the abrogation or curtailment of the statutory right to apply for (and, I would add, to be granted) an administration order would require unambiguous wording in SAMLA itself, rather than in the Sanctions Regulations. Moreover, in the absence of any express prohibition in SAMLA on making an administration order, Parliament would not be taken to have intended such a prohibition unless that was a necessary implication from the express words.

86. Ms Page and Mr Ray did not suggest there were any specific provisions of SAMLA which might be said to prohibit the making of an administration order. The potential candidate would be section 3(1), which prescribes the scope of the "*financial sanctions*" which can be imposed by regulations, and which was the principal provision relied on by the defendants in the Mints case. Section 3(1)(a), however, merely refers to prohibitions or requirements for the purpose of "*freezing funds or economic resources owned, held or controlled by designated persons.*" Section 3(1)(d) refers to prohibitions or requirements "*preventing funds or economic resources from being made available to, or for the benefit of, designated persons…*" Even read with the wide definitions of "*funds*" and "*economic resources*" in section 60, set out above, I cannot see how it can be said to be a necessary implication from these provisions that the making of an administration order is prohibited.

87. Indeed, there is something unreal about a suggestion that Parliament intended SAMLA to prohibit the use of the insolvency regimes put in place by the 1986 Act if the insolvent party is a designated person, or is connected with a designated person, without making that intention express. The statutory rights given by the 1986 Act to have licensed professionals appointed for the

protection and benefit of creditors of insolvent entities and individuals are well-known and obviously important for commerce and justice. Although SAMLA had not been enacted at the time the R v R case was decided, there is nothing to suggest that it was intended to change the policy described by Ryder LJ that, "*…it is no part of the sanctions regime to prevent judges in the EU from making regular orders in favour of persons who are entitled to seek the court's determination of an issue within the competence of that court.*" In my judgment, SAMLA cannot be interpreted as intended to prohibit the making of administration orders.

88. The Amendment Regulation referred to above provides support for that conclusion. In permitting a licence to be granted "*to enable anything to be done in connection with*" insolvency and restructuring proceedings, including administration, the new paragraph 9DD implicitly assumes that such proceedings might be on foot, in connection with which things may need to be done. That, in turn, indicates that the existence of such proceedings by themselves is not intended to be prohibited by SAMLA. The reference to insolvency and restructuring "*proceedings*" cannot merely be a reference to the court process, because the definition of such proceedings in paragraph 9DD(2) refers to "*the regimes and proceedings set out in Parts A1 to 6 of the Insolvency Act 1986.*" That is, in my judgment, obviously intended to refer to the processes of liquidation and administration themselves (amongst other processes).

89. Paragraph 5.16(b) of the Explanatory Memorandum, quoted above, also supports this interpretation. The Explanatory Memorandum cannot, of course, be treated as reflecting the intention of Parliament, which is to be determined by reference to the words enacted, but it can nevertheless be taken into account in so far as it casts light on the contextual scene of a statute, and the mischief at which it is aimed (see R (Westminster City Council) v National Asylum Support Service [2002] 1 WLR 2956, at paragraphs 2-5, per Lord Steyn).

90. Here the Explanatory Memorandum refers to the need to license "*payments and other activity made in relation to insolvency, restructuring and related proceedings.*" That suggests it is payments and activity carried out by an officeholder which have the potential to fall within the mischief at which the Sanctions Regulations are aimed, and therefore require a licence to be sought, rather than the insolvency proceedings themselves. The final sentence of paragraph 5.16(b) refers to existing licensing purposes being "*not always sufficient to license activity which relates to insolvency proceedings.*" This suggests that, even before the Amendment Regulations were laid before Parliament, the mere existence of insolvency proceedings was not considered to be in breach of sanctions; rather it was the activity of the officeholder which might require licensing. This is also consistent with OFSI not having attended this hearing or expressed any objection in correspondence to the making of an order, despite being told about the Administration Application, although I do not place much weight on this consideration.

91. For these reasons, I conclude that the making of an administration order does not, in principle, breach regulations 11 to 15 and 19 of the Sanctions Regulations.

Submissions (iii), (iv) and (v): interpretation of regulations 11 to 15

92. In a reversal of the approach taken by Sir Julian Flaux C in Mints, I have reached the above conclusion by application of the principle of legality, without considering the words of the particular Sanctions Regulations. Nevertheless, I shall proceed to consider those words.

93. During the hearing, I was concerned that the appointment of the Joint Administrators might be argued to involve "*dealing with*" a "*fund*" within the meaning of regulation 11(4). It was held in Mints that a cause of action is not a "*fund*", but there is no room for doubt that, for example, the cash in the Company's accounts with ING is a "*fund*". Section 60(b) of SAMLA includes "*deposits, balances on accounts, debts and debt obligations*" within the definition of "*funds*".

94. Sir Julian Flaux C also held in Mints that, if a cause of action were a "*fund*", the issue of a claim form or the pursuit of proceedings would be a "*use*" of the fund, or a change in its character, under regulation 11(4). That broad interpretation reflects the wide definition of "*deals with*" in that regulation, which includes, in regulation 11(4)(c), "*use*" of a fund and making "*any other change … that would enable use of the funds.*" The draft administration order provided to me included, in the normal way, a provision that, "*During the period for which this order is in force, the affairs, business and property of the Company be managed by the Joint Administrators.*" The appointment of Joint Administrators expressly to manage the Company's property, which would include the "*funds*" in the ING accounts, initially seemed to me (as a matter of the natural meaning of the words) potentially to be making a change which might be described as "*enabling*" use of those funds in due course. If that is right, regulation 11 would potentially be engaged in relation to the appointment of the Joint Administrators.

95. I was not attracted by Ms Page's argument that regulation 11 does not apply because the court is not a "*person.*" I accept that some support for that proposition is to be found in Cockerill J's decision at first instance in Mints, but she did not ultimately reach a concluded view. The Court of Appeal said it would be better to leave the point to be determined when it was necessary for the decision. Resolution of the point does not seem to me straightforward and would be unlikely to assist. Even if the argument is correct, it does not remove the difficulty, because the Joint Administrators are undoubtedly "*persons*" who might be said to be making a change enabling use of the relevant funds by accepting appointment. I appreciate that Cockerill J was unpersuaded by a similar argument in Mints, but that was because the relevant "*dealing*" in the circumstances of that case was entering judgment, which was an act of the court, rather than any "*person*". By contrast, the court cannot make an administration order without there being a "*person*" or "*persons*" willing to be appointed as administrators, and their acceptance of the appointment is independent from the court's decision.

96. Nor do I think it is decisive that the appointment of an administrator does not result in any change in the legal or beneficial ownership of the assets of a company. So far as beneficial ownership is concerned, Ms Page submitted that,

if a statutory trust arises at all in relation to an administration, it will not arise before notice of a proposed distribution is given (see In re Lehman Bros Europe Ltd (No 9) [2018] Bus LR 439 and Revenue and Customs Comrs v Football League Ltd [2012] Bus LR 1539). Even if that is right, it is not necessary for there to be a change in legal or beneficial ownership for regulation 11 to bite. A person deals with funds by making "*any other change*" that would enable their use, and there seems no obvious reason why a change in management of the funds could not count as such a change (particularly where regulation 11(4)(c) expressly refers to "*portfolio management*").

97. I agree, however, with Ms Page's submission that the mere appointment of administrators, by itself, is not naturally described as "*dealing with*" any "*funds*", or "*use*" of them. Adapting Sir Julian Flaux C's expression in Mints, the words "*dealing with*" are not apt to describe the exercise by the court of its judicial function of appointing administrators, nor the acceptance by a licensed insolvency practitioner of an appointment. The funds will only be "*dealt with*" in the natural sense of that expression when the Joint Administrators actually take some step in relation to them, following their appointment. That analysis is consistent with the approach taken by the new paragraph 9DD which will take effect pursuant to the Amendment Regulations. As explained above, this implicitly assumes that it is not insolvency proceedings themselves which are intended to be prohibited by SAMLA, but that it is the payments made, and activities undertaken, by the appointed officeholders which potentially require a licence.

98. Those considerations point away from the language in regulation 11(4)(c) being intended to capture the appointment of administrators, by itself. Whilst the appointment by the court of administrators can, no doubt, be described as making a "*change*", I consider that, properly understood, it is not a change which "*would enable use of the funds*" in the sense intended by the regulation. The appointment of administrators does not "*enable*" a use of any funds by, or for the benefit of, or at the direction of, a designated person (or a person they own or control). On the contrary, administrators must use any funds under their control strictly for the statutory purposes for which they are appointed. In my judgment, appointing administrators with a view to them using funds for those purposes is not intended to be caught by regulation 11. Either that regulation is naturally to be interpreted so that the court's appointment of administrators, and their acceptance of that appointment, do not by themselves involve any "*dealing with*" funds, or "*enabling*" them to be used (within the meaning of regulation 11(4)); or the regulation is to be "*read down*" in that way and "*construed so as not to curtail the right of access to the court*", as explained by Sir Julian Flaux C in Mints.

99. Similar considerations apply to regulations 12 to 15. If an administration order and the acceptance of an appointment by an insolvency practitioner do not amount to a "*change*" which would "*enable use of*" funds within regulation 11, it is difficult to see how they can amount to "*making funds available*" (or "*making economic resources available*") within regulations 12 to 15. Funds (or economic resources) might be made available to designated persons, or for their benefit, when administrators deploy them in some way, but not merely by the

administrators being appointed. The appointment by itself does not give designated persons any access to the funds or economic resources. But again, if it is possible to read these regulations so that an administration order is potentially caught, they should be "*read down*" so as not to curtail the right of access to the court.

Submissions (vi), (vii) and (viii): circumvention and the relevance of licensing

100. Ms Page submitted that each of regulations 11 to 15 contains, at sub-paragraph (2), wording making the relevant prohibition "*subject to Part 7 (Exceptions and licences)*". She points out that the Joint Administrators have applied for a licence from OFSI to enable them to take all necessary steps, and that Mr Cork has confirmed in his statement that, "*If appointed, we would always comply with applicable sanctions*".

101. The position in relation to licences was an important consideration in the three cases concerning sanctions to which I was referred, in which administration orders have been granted.

102. The first in time was Re Sberbank CIB (UK) Ltd. [2022] EWHC 1059. That was an application for a special administration order pursuant to regulation 5(1)(B) of the Investment Bank Special Administration Regulations 2011. I do not see any relevant distinction for present purposes between such an application and an application under Schedule B1. The indirect parent of the company was subject to sanctions and the company was only able to carry on business with the benefit of licences granted by OFSI, one of which was about to expire, which prompted the application.

103. The application was urgent and unopposed. Although Michael Green J was shown the sanctions regime, there was evidently no time to consider the provisions of the Sanctions Regulations in any detail. When considering his discretion, he noted that the proposed special administrators were concerned not inadvertently to be in breach of sanctions and that they had begun negotiations with OFSI for a licence. He said (at paragraph 32): "*Whilst the sanctions have brought about the situation that the company is now in, it is critically important that the administration* [sic] *can take effective control of the company and in my view, that is likely to ensure compliance with the sanctions while winding it up in an orderly way. I think that in some way, the appointment of administrators strengthens the prospects of sanctions being complied with and is the most sensible thing to do in all of the circumstances.*" He made the order sought.

104. The next case in time was Re VTB Capital Plc [2022] BCC 1049. The company and its ultimate parent were subject to sanctions and its main correspondent sterling bank account with HSBC was frozen. OFSI had initially refused the company a licence to carry on its activities for the benefit of its creditors but had subsequently granted a general licence which would be suitable for the administrators' purposes, were they to be appointed. For the administration to be carried out, however, the company required a further licence from the equivalent US body to OFSI, the Office of Foreign Asset Control (**OFAC**). Such a licence had been applied for, but not yet granted.

105. When considering his discretion, Fancourt J took into account OFSI's grant of a licence and said that the making of an administration order "*is effectively being approved in principle by OFSI.*" Nevertheless, although he was prepared in principle to make an order, he directed that the appointment of administrators "*should not take effect until it is known whether the licence from OFAC will in fact materialise; and provided that the OFSI licence remains in place at the same time.*" He pointed out that, on the evidence before him, the appointment would be pointless in the absence of a licence from OFAC. Accordingly, the administration order was not to be made or sealed until evidence was filed to show that both licences were in place. Again, the application seems to have been dealt with urgently and Fancourt J did not analyse the Sanctions Regulation in any detail, although he said that the grant of a licence by OFSI meant that questions as to whether sanctions were being circumvented did not arise.

106. The final decision to which I was referred was Re CargoLogicAir Ltd [2022] EWHC 3316 (Ch), another decision of Michael Green J made on an urgent application. Sanctions had been imposed on the ultimate majority shareholder of the company. OFSI had granted a "*Basic Needs Licence*" which was valid for around 6 weeks from the date of the hearing, but the company's bankers had nevertheless said they would close its only bank account in two weeks' time. The proposed administrators had applied to OFSI for a licence which would enable them to deal with the company's funds if they were appointed. That licence had not been granted at the time the application was heard, but the evidence was that it was reasonably likely that OFSI would grant it within a reasonable time. Michael Green J referred to what he had said in Sberbank about the appointment of administrators ensuring an orderly wind down of a company's business whilst respecting sanctions.

107. He then referred to Fancourt J's decision in VTB, noting that the order in that case had been "*suspended*" pending grant of the licence by OFAC. He said that the case before him was different because it was only a licence from OFSI which was required and because there was already a Basic Needs Licence in place. Since he was of the view that it was important for administrators to take immediate control of the company, he made the order immediately.

108. It was, therefore, only in the first of these three cases that an order was made without at least some form of licence already being in place pursuant to which the administrators could take some steps.

109. In the light of these three cases and the conclusions I have reached above based on the decision in Mints, the position is, in my judgment, as follows:

    i) If there is a licence from OFSI already in place which enables administrators to take all the steps they need to take, an administration order will not be a breach of regulations 11 to 15, as a straightforward matter of interpretation of those regulations. They are each expressed to be subject to the licensing exception in sub-paragraph (2).

    ii) If there is no licence from OFSI already in place, or if the existing licence is (or licences are) insufficient to enable the administrators to take all the

steps they need to take, an administration order by itself would still not be a breach of regulations 11 to 15, either because the wording of those regulations is not apt to describe the exercise by the court of its judicial function of appointing administrators (or the acceptance by a licensed insolvency practitioner of an appointment), or because they should be "*read down*" so as not to curtail the right of access to the court.

iii) Nevertheless, where there is no licence from OFSI already in place, or if the existing licence is (or licences are) insufficient to enable the administrators to take all the steps they need to take, those are important factors to be taken into account when the court is exercising its discretion.

iv) If there is no good reason for making an immediate appointment, it is likely to be appropriate to postpone the making of an order until a licence is granted, as Fancourt J did in VTB.

v) It might, however, be appropriate to make an immediate order, if it is important for the administrators to take immediate control of the company. As Michael Green J pointed out in Sberbank, the immediate appointment of licensed insolvency practitioners may make it more likely that the necessary licences will be sought and that steps will not be taken in the meantime which might be in breach of sanctions.

vi) Provided the court is satisfied that the administrators will not take any steps which might otherwise be in breach of sanctions unless and until an appropriate licence has been granted, the appointment of administrators will not have the object or effect of circumventing the prohibitions in regulations 11 to 15, and therefore there will be no breach of regulation 19. Regulations 11 to 15 contemplate that a licence can be granted to enable steps to be taken which would otherwise be prohibited. Applying for such a licence is self-evidently not a circumvention of the prohibition and, in my judgment, appointing administrators with a view to them making an application is not a circumvention either.

Exercise of discretion in this case

110. I considered whether, in the case before me, I should postpone the making of any order until OFSI has decided whether to grant a licence. There are, however, three factors which persuaded me that it was appropriate to make an immediate order.

111. First, as indicated above, there is evidence that OFSI may be more likely to grant a licence, or to do so more quickly, once administrators have been appointed. In this regard, it is of some relevance that there will soon be a specific licensing ground in relation to insolvency proceedings, when the Amendment Regulation comes into force on 5 December 2024. Whilst there is a chicken-and-egg aspect to this, it seems to me reasonable to infer that (depending on the facts of a particular case) an officeholder might be more likely to be able to obtain a licence pursuant to the new paragraph 9DD after an

administration order has actually been made, so that insolvency proceedings (within the meaning of that paragraph) are already in existence.

112. Secondly, the Companies Registrar gave notice on 28 May 2024 that the Company would compulsorily be struck off for failure to file accounts. That action was temporarily suspended, but the "*grace period*" will expire at the end of November 2024 (two weeks after the hearing before me). It is reasonable to infer from the delays to date (and the fact that the new paragraph 9DD will not come into force until 5 December 2024) that OFSI is unlikely to grant a licence before then. There was, therefore, a risk of a disorderly dissolution process, if the making of the administration order was postponed, which would have been disadvantageous for creditors. The evidence is that such an outcome will be avoided by the immediate appointment of the Joint Administrators.

113. Thirdly, there is a substantial number of creditors and Mr Cork assesses the risk of one or more of them taking enforcement action as high. That is borne out by the evidence concerning the actions already taken by Flight Centre. Flight Centre has not proceeded beyond the steps outlined above, and no creditors have yet issued a winding-up petition. That is possibly because they have been kept informed about the progress of the Administration Application. But that application was made as long ago as 15 May 2024 and there is likely to come a point when the creditors' patience wears thin. In that regard, I bear in mind that Keltbray's intervention in the Administration Application was prompted by its unwillingness to accept a further adjournment. In my judgment, the risk of enforcement action was increasing day by day and, if I had postponed the making of an administration order, the risk would have increased further when the creditors heard about that further delay.

114. For these reasons I was minded to make an immediate administration order. Nevertheless, with a view to ensuring that there was no breach of sanctions in the period between the making of the order and the grant of a licence by OFSI, and also to limit the length of that period, so far as possible, I invited Mr Ray to take instructions as to whether the Joint Administrators were willing to give undertakings. The undertakings they ultimately offered, and I accepted, were as follows:

> "*(1) To pursue licence application reference number INT/2024/4748516 made to the Office of Financial Sanctions Implementation (**'OFSI'**) on 17 May 2024 ('**Licence Application'**) in an expeditious manner;*
>
> *(2) Not to 'deal with' the 'funds' or 'economic resources' of the Company within the meaning of Regulation 11 of the Russia (Sanctions) (EU Exit) Regulations 2019 (**'Regulations'**) unless and until a licence has been granted by OFSI pursuant to the Licence Application (including as it may be amended);*
>
> *(3) That if by 5 March 2025, OFSI has not granted the Licence Application (including as it may be amended), they will apply to Court for directions.*"

115. These undertakings largely reflect Mr Cork's evidence as to what the Joint Administrators would have done without the need for any undertakings, but their willingness to provide undertakings gave me maximum confidence that there is no risk of sanctions being breached.

116. It is sensible to have a long-stop date by which, if OFSI has still not granted the relevant licences, the administrators must return to court, as required by the third of the undertakings. The directions to be given at that stage will obviously depend on what has happened between now and then. In light of the evidence about the slow process involved in obtaining licences, I was prepared to allow a reasonably generous period for the licence to be obtained. The date of 5 March 2025 is based on a period of three months from the date on which the Amendment Regulation comes into force. If a licence has not been obtained by then, I would expect a good explanation to provided.

117. In the light of those undertakings, and for all the reasons given above, I was satisfied that the Administration Application and the order do not breach regulations 11 to 15 and 19. The order, therefore, contains a recital to that effect. I stress (for the avoidance of doubt) that this is not a declaration that there is no breach of the regulations and the recital cannot bind OFSI, which (as recorded above) is not a party to the Administration Application and was not represented at the hearing.

(vi) Other terms of the order

118. I was asked to exercise the court's power under para.13(1)(f) of Schedule B1 to make ancillary orders that the Joint Administrators be at liberty to: (i) open insolvency bank accounts in their names with any suitable commercial bank; (ii) maintain and manage the Company's current banking arrangements with commercial banks; and (iii) use the Insolvency Service Account (**ISA**) for operational banking if the Joint Administrators are unable to obtain commercial banking facilities from a UK clearing bank. These seemed to me to be appropriate orders to make, subject to two points.

119. First, the order relating to the ISA is based on similar orders made in the Sberbank and CargoLogicAir cases. The evidence before me included correspondence with the Insolvency Service in which they had indicated that the ISA account holders may not be prepared to agree to the use of the ISA in this case. Although I was willing to give the Joint Administrators permission to use the ISA if the Insolvency Service consents, I am not to be taken as ordering the Insolvency Service (or the ISA account holder) to make the ISA available or, indeed, as expressing any views about the desirability of them doing so.

120. Secondly, all these ancillary orders were made expressly subject to the Joint Administrators having obtained all necessary licences. The same goes for the usual provisions that the Joint Administrators are to manage the affairs, business and property of the Company during the period for which the order is in force,

and that the Joint Administrators may exercise their powers jointly or individually.

121. The other provisions of the order are self-explanatory and were common ground between Mr Ray and Ms Page. For all the reasons I have given, I made the order on 15 November 2024.

122. I am grateful to Mr Ray and Ms Page for their helpful written and oral submissions and their practical and constructive approach to this matter.