Neutral citation number: [2025] EWHC 244 (Ch)

No: CR-2024-007194

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

IN THE MATTER OF A COMPANY
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Royal Courts of Justice
Rolls Building
Fetter Lane
London EC2A 1NL

Date: 6 February 2025

Before:

Deputy ICC Judge Baister

- -

THE JOINT ADMINISTRATORS OF THE COMPANY	**Applicants**

Simon Jones (instructed by **Freeths LLP**) for the **Applicants**

Hearing date: 31 January 2025

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Approved Judgment

This judgment was handed down at 3.30 pm on 6 February 2025 by email to the applicants and by release to the National Archives

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Deputy ICC Judge Baister:

The application and the background to it

1. The applicants are the joint administrators of the company, having been appointed on 26 November 2024 by its directors. The company forms part of a group consisting of a large number of companies. It did not trade. Its assets consisted largely of shares it held and debts due from one or more group companies.

2. On 31 January 2025 I heard the applicants' application for the following:

> (1) an order pursuant to r 3.45(1)(a) Insolvency (England and Wales) Rules 2016 permitting them to exclude the amount owed to the company's creditors from its statement of affairs and associated document on the basis that the applicants are concerned that making that information public would adversely affect a potential sale of apparently valuable assets in the form of shares;
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> (2) that that the application be heard in private since publicity of this hearing would defeat its object; and
>
> (3) whether or not the relief set out in (1) and (2) was granted, an extension of time under Sch B1 paragraph 49(5) Insolvency Act 1986 in which to file the statement of affairs and their statement of proposals.

I made those orders substantially in the form sought with written reasons to follow. These are my reasons. They largely follow Mr Jones's helpful skeleton argument, with the content of which I agree, but amplify them by reference to some of the case law to which he took me.

3. Shortly before the appointment of the applicants as administrators, but on the same day, the company entered into agreements disposing of shares it held. It did so by executing a share sale agreement, a declaration of trust, a security agreement and a call option. The consideration for the share sale was a substantial sum. It was not satisfied by payment but took the form of a reduction in indebtedness on the part of the company to other group companies. The applicants are considering whether to exercise the call option, which in effect would undo the share sale and result in the return of the shares to the company, but the debts forgiven by way of satisfying the consideration would also come back with them, or whether they should challenge the transaction under one or more of the provisions of the Insolvency Act 1986 dealing with antecedent transactions. They are also considering what they call a "hybrid option," the detail of which does not matter for present purposes. Before deciding which course to take, the applicants say they will need to take advice, which will include how to value and market the shares to potential purchasers, which, they anticipate, will be substantial companies in the same line of business as that conducted by the group or private equity firms. A purchaser will be likely to engage its own advisers before making an offer. The applicants say that access to a statement of affairs in conventional form could give a potential purchaser a commercial advantage by enabling it to ascertain the consideration for the share sale that took place on 26 November 2024 and peg any offer to that or

something close to that, a nominally increased sum. That would potentially have a negative effect on the process they envisage.

4. With that brief summary of the background in mind (the witness statement in support provides greater detail) I turn to the relief sought and my reasons for granting it. The reasons I give under each of the headings that follow inform my thinking on the others.

Hearing in private

5. Under CPR 39.2(1) the general rule is that a hearing should be public and "may not be held in private, irrespective of the parties' consent, unless and to the extent that the court decides that it must be held in private, applying the provisions of paragraph (3)." Those provisions (CPR 39.2(3)) are:

> (a) publicity would defeat the object of the hearing;
>
> (b) it involves matters relating to national security;
>
> (c) it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality;
>
> (d) a private hearing is necessary to protect the interests of any child or protected party;
>
> (e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing;
>
> (f) it involves uncontentious matters arising in the administration of trusts or in the administration of a deceased person's estate; or
>
> (g) the court for any other reason considers this to be necessary to secure the proper administration of justice.

The applicants rely on grounds (a) and (c). The force of their reliance on ground (a) requires no elaboration once one accepts at face value the applicants' view of the potential commercial detriment to the price to which publicity could give rise, which I must and do. The consideration paid on the share sale must, I think, be capable of being regarded as confidential information within the scope of ground (c): such information would not normally be available publicly in relation to a private sale such as this. In my view it is. For those reasons I agree that the circumstances of this case warrant a derogation from the normal principle of open justice.

6. In reaching that view, I take into account, as I must, the warnings as to the limits of the jurisdiction and the circumstances in which it may be invoked set out in the judgment of Floyd J in *Re Shuldham* [2012] EWHC 1420 (Ch), a case in which relief was refused. The learned judge emphasised the need for

> "[t]he court…to form a view as the nature of the confidential information, its importance to the party, and the damage he will

> suffer by its disclosure before deciding whether it is necessary to hold a hearing in private."

I have formed the view I have on the basis of what I have set out above, but also on all the evidence before the court and having regard to the purposes of administration and the interests of creditors.

7. Mr Jones also took me to the judgment of Richard Spearman QC, sitting as a Deputy Judge of the Chancery Division, in *Registrar of Companies v Swarbrick* [2014] EWHC 1466 (Ch), an unsuccessful appeal against an order of Mr Deputy Registrar Garwood providing for a private hearing and granting, in relation to an administrator's' proposal, relief not exactly of the kind sought in this case but to apparently similar effect. I shall consider that case further in the context of the other relief sought, to which it has greater relevance. Suffice it to note for now that the deputy registrar's order of a private hearing survived scrutiny, although I recognise that that part of his order was not the main target of the appeal.

Excluding information from the statement of affairs

8. Rule 3.44 Insolvency (England and Wales) Rules 2016 introduces Chapter 8 (headed "Limited disclosure of statement of affairs and proposals") of Part 3 of the Rules (dealing with administration) with the words

> "This Chapter applies to the disclosure of information which would be likely to prejudice the conduct of the administration or might reasonably be expected to lead to violence against any person."

There is no suggestion that we are concerned with violence here; it is prejudice to the conduct of the administration that is in issue.

9. Rule 3.45 provides:

> (1) If the administrator thinks that the circumstances in rule 3.44 apply in relation to the disclosure of—
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> (a) the whole or part of the statement of the company's affairs;
>
> (b) any of the matters specified in rule 3.35(1)(h) and (i) (administrator's proposals); or
>
> (c) a statement of concurrence,
>
> the administrator may apply to the court for an order in relation to the particular document or a specified part of it.
>
> (2) The court may order that the whole of or a specified part of a document referred to in paragraph (1)(a) to (c) must not be delivered to the registrar of companies or, in the case of the statement of proposals, to creditors or members of the company.

I am assisted in considering how to apply the rules by a number of authorities.

10. In *All Leisure Holidays Ltd (in administration)* [2017] EWHC 870 (Ch) His Honour Judge Purle QC, sitting as a High Court Judge, identified one of the issues before him in paragraph 44 of his judgment thus:

> "The evidence establishes that it will prejudice the conduct of the administration if full statements of affairs are filed containing the names and addresses and debts of the customers, all of whom must be identified as creditors, albeit possibly only prospective or contingent creditors in some cases. The reason for that is that the terms of the sale of the businesses and assets to G Adventures contain confidentiality clauses protecting those details. It is easy to imagine competitors taking advantage of such disclosure. The details are a ready-made customer database."

The judge made the orders sought by the administrators, albeit under the provisions of the Insolvency Rules 1986 then in force (of particular relevance is for this is application is r 2.30).

11. *Registrar of Companies v Swarbrick*, to which I have referred already, deals with r 2.33A Insolvency Rules 1986, the predecessor of the current rule, although both are similarly framed and for that reason the authority remains good. It was, as we have seen, an appeal. It concerned an application to remove information from the register maintained at Companies House. The judgment, addressing the conduct of hearings in private, contains, by reference to Practice Guidance issued by Lord Neuberger MR, a recital of the principles regarding open justice and the circumstances in which derogation from them may be appropriate (paragraph 15). Addressing r 2.33A, the learned deputy judge describes the rule as "tightly focussed" (paragraph 43), points out that satisfaction of the criteria enabling an order to be made does not lead to the conclusion that there is "an unlimited power to limit disclosure" (*loc cit*) and refers to a threshold requirement that disclosure "would prejudice the conduct of the administration," an expression he says "is readily understandable," which I take to mean that the words should be given their natural meaning.

12. In *Re Peter Jones (China) Limited* [2021] EWHC 215 (Ch) His Honour Judge Davis-White QC, sitting as a Judge of the High Court, gave reasons for directing the removal of certain pages from a company's statement of affairs filed at Companies House by administrators. His reasons for doing so largely concern the exercise of discretion by the registrar of companies, but in reaching his decision the judge built on the *Swarbrick* judgment. This and his conclusion on the application before him also militate in favour of granting the relief sought in this application.

13. In *Re TenetConnect Limited (in administration)* [2024] EWHC 2944 (Ch) ICC Judge Greenwood directed that creditors of companies in administration could be notified of the administrators' appointments and that documents relating to the administration could be made available on a website and in the form of advertisements in specified publications. He took into account in doing so the number of former customers, the age of some of the information about many of them and the cost of identifying and communicating with them individually of assets available to the creditors. Those facts are very different from those applicable to this application, but in my view the important thing is the ability of the court to take into account commercial considerations in considering whether or not to grant relief. In *TenetConnect* that was concern about the

burden of costs and their effect on the administration. The commercial considerations in issue before me are, I would say, more pressing.

14. Considerations of commercial sensitivity also played a part in the decision of Chief Judge Briggs in *Bulb Energy Limited* [2011] EWHC 3680 (Ch) and the authority on which Judge Briggs drew in deciding to grant relief, *Gould v Advent Computer Training Ltd* [2010] EWHC 1042 (Ch) in which student details were allowed to be omitted to prevent confidential customer information from falling into the hands of possible competitors.

15. Those authorities applied to the facts of this case provide, in my view, an ample and justified basis on which to grant relief in this case too.

Extension of time

16. Sch B1 paragraph 49(5) Insolvency Act requires an administrator to send a statement of proposals to the registrar of companies, to every creditor, and to every member of the company:

> "(a) as soon as is reasonably practicable after the company enters administration, and
>
> (b) in any event, before the end of the period of eight weeks beginning with the day on which the company enters administration."

In this case the eight week period ended on 21 January 2025. However, paragraph 49(8) allows that period to be varied in accordance with paragraph 107 which in turn allows extension after expiry of the time period in question. The applicants rely on this and on Sch 5 paragraph 3 Insolvency (England and Wales) Rules 2016 which imports into the Rules CPR 3.1.2(a), enabling the court to extend or shorten the time for compliance with anything required or authorised to be done by the Rules.

17. I accept Mr Jones's submission that it was desirable in the circumstances of this case to extend time until after the hearing which I am content to have done on either or both of the bases on which the relief is sought.

18. I end by mentioning two points. The first is that the number of creditors in this case is small and they are known to one another, so nothing in the making of any of the orders I have made is likely to impede their ability to consult one another. The second is that I have made provision in the order for any party affected to apply to vary or discharge it on notice.