

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BIRMINGHAM DISTRICT REGISTRY

Birmingham Civil Justice Centre
Bull Street, Birmingham B4 6DS

Date: 31/08/2016

Before :

HHJ DAVID COOKE

In the Matter of Kiss Cards Ltd
And in the matter of the Insolvency Act 1986

Between :

Martin Frederick Peter Smith (1)
Nicola Joanne Hawksley (2)
(Joint Liquidators of Kiss Cards Ltd)
Kiss Cards Ltd (In Liquidation) (3)

Applicants

- and -

Simon James Lawson (1)
Catherine Lawson (2)

Respondents

Matthew Weaver (instructed by **Cameron Legal LLP**) for the **Applicants**
The Second Respondent (assisted by **the First Respondent**) appeared in person

Hearing dates: 26-27 July 2016

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Approved Judgment**HHJ David Cooke:**

1. By their application, the liquidators of Kiss Cards Ltd seek declarations that various payments made, they say, by that company to the second respondent Mrs Lawson constitute transactions at an undervalue for the purposes of section 238 of the Insolvency Act 1986, and orders that she should pay the amount of those transactions back to the company in liquidation. As originally issued, the amount claimed against Mrs Lawson was approximately £105,000. There were in addition claims made against Mr Lawson in respect of various payments for his benefit. However since the application was issued Mr Lawson has entered into a voluntary arrangement and in consequence all the claims against him have been discontinued. Mrs Lawson has provided explanations of the various payments said to have been made to her, as a result of which the liquidators now seek to proceed only in respect of payments amounting to £37,588.97 p.
2. Mr. Lawson gave evidence and effectively conducted the case on behalf of his wife. I allowed him to do so, though I required her as a litigant in person to be in attendance. I also allowed Mr. Lawson to extend his evidence to adopt what had been put in Mrs Lawson's witness statements since Mrs Lawson was too distressed to speak for herself or give evidence. I was satisfied that Mr. Lawson was the leading light in all these arrangements and the affairs of the company and that to the extent evidence had been provided by way of a statement in Mrs Lawson's name it had been written for her so that its effective source was Mr. Lawson in any event. When I refer in this judgment to the conduct of the case by Mr. Lawson, I do not lose sight of the fact that he did so on behalf of his wife.
3. There was insufficient time to deliver judgment at the close of the trial on 27 July 2016, so I indicated to the parties that I would do so in writing as soon as possible thereafter, and that with a view to minimising the delay, the judgment would be relatively brief.
4. Kiss Cards Ltd was incorporated on 17 March 2011 and traded as a retailer of gift cards to the public through a number of leased shops and concession outlets. Mr Lawson was the sole director and shareholder. Mrs Lawson was employed by the company as a bookkeeper. The company was effectively the successor to Paperbox Stores Ltd, which ceased trading because of substantial insolvency. That company had carried on the business in succession to another company which had previously become insolvent. Kiss Cards Ltd itself traded only for a little over a year, going into administration on 6 August 2012 and subsequently into creditors voluntary liquidation. The estimated deficiency of assets at the start of the administration was approximately £2.3 million, including an estimated liability to HMRC of £584,000. A substantially greater claim has in fact been submitted by HMRC and the liquidators currently estimate the overall deficiency to exceed £2.8 million.
5. All the payments in question were made into a joint account in the names of Mr and Mrs Lawson. There is an issue in relation to some of them as to whether they were intended to be payments for the benefit of Mr Lawson rather than Mrs Lawson, and if so whether Mrs Lawson is nevertheless to be treated as party to a "transaction" with the company by virtue of having a joint interest in the bank account into which the payments were made.
6. There is no doubt that all the payments were made at a "relevant time" as defined in section 240, because, firstly, all of them were made within the two years prior to the

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onset of insolvency (whether that be the commencement of the administration or the liquidation) and secondly the company is presumed to have been insolvent at that time because the payments were made to a "connected person", being either Mr Lawson as director of the company or Mrs Lawson as his wife. No evidence or argument has been presented to rebut that presumption.

7. The onus is on the liquidators to show that there has been a transaction, and that it is either a gift or a transaction in which the value of the consideration received by the company is significantly less than that provided by the company. Realistically one must recognise that the liquidators come to the insolvency with no knowledge of the company's affairs other than what appears in the books and records and/or is provided by the directors, so that their evidence may be no more than that a payment has been made, and as far as can be established from those sources, there is no explanation for it that shows that any consideration, or sufficient consideration, has been received by the company. That may be sufficient to satisfy the initial hurdle on them, so that it is for the recipients who have direct knowledge of the circumstances to satisfy the court that there has in fact been such consideration given.
8. The fact that a payment has been made into a joint account does not in my judgment necessarily mean that there has been a "transaction" between the payer and all the holders of the joint account. It may be the case that if there is no explanation for the payment it might be regarded as a gift to the account holders. But in any other circumstances it is necessary to look at the evidence of the surrounding circumstances to identify whether there has been any form of mutual dealing or arrangement that may properly be called a "transaction" and if so which if any of the account holders has been party to it.
9. In *Re Taylor Sinclair (Capital) Ltd (in liquidation); Knights v Seymour Pierce Ellis Ltd* [2001] 2 BCLC 176 payments by cheque from a company to a stockbrokers' firm were held not to amount to a transaction between the company and the stockbroker because (a) the money paid was not the company's money but held on behalf of a different US company and (b) relevantly to this case, the money was paid to the stockbroker not for its own benefit but for the benefit of one of the stockbroker's clients, to be credited to that client's account with the stockbroker. There was thus no element of mutual dealing between the company and the stockbroker itself (see judgment paras 20-22) and the relevant transaction was with the client (para 19).
10. Thus if in this case the company pays money to the joint account of Mr. & Mrs Lawson, one must look at the surrounding circumstances to see whether the payment was part of a "transaction" with one or the other (and if so which) or both of them. If there was a transaction, the payment is only potentially vulnerable in this application if that transaction is with Mrs Lawson. If the money was paid to settle a liability to Mr. Lawson, or a claim by him, the relevant transaction would be with him and not Mrs Lawson.
11. It is Mrs Lawson's case that most if not all of the payments made can be seen to have been intended to be for the benefit of Mr. Lawson rather than herself, largely to discharge claims for expenses by him. This is shown either (a) by the bank payment reference or (b) from entries in the company's Sage accounting system recording the purpose of the payments.
12. Payments were made using an online banking system to one of a list of payees set up on that system. Mr Lawson gave evidence that he had set up the payee list, and had

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first set up "C Lawson" as a payee, using the bank details for the joint account. When he then tried to set up "S Lawson" as a separate payee the online banking system would not permit him to do so with the same bank account details. Therefore, payments intended for him were made with an additional reference "1", which was shown on the bank statements. Payments intended for Mrs Lawson could be given the reference "2"; the numbers 1 and 2 corresponding to their payroll numbers on the firm's Sage payroll system. I accept in general the evidence as to the intended operation of that reference system; although the liquidators did not concede the point, in the end Mr. Lawson was not challenged about it in cross examination. The reference applied to a payment is not however necessarily conclusive.

13. The Sage system was capable of recording the reason for a payment, and in some cases either itself contained a breakdown of items making up a payment which would show what it was for, or would show a nominal account code to which the payment had been allocated which might indicate, for instance, whether it was intended to be a payment of expense to Mr. Lawson or Mrs Lawson. It was part of the Lawsons' case that the liquidators had failed to look carefully enough at the system to identify the purpose of all the payments and that if they did so the explanations would be seen. The liquidators' position was that while explanations were apparent in some cases that was not so in all and that it was for Mr. & Mrs Lawson to explain the others, or identify where in the accounting system the explanation could be found. I made orders earlier in the case that Mr. Lawson be given access to the company's records to enable him to do so. As a result some further explanations were provided and many of the items originally claimed were not pursued.
14. It is necessary to look at all the available information to see if it can be ascertained what if any transaction a payment represents. It was apparent that the bank payment references were not always consistent with the Sage records. In some cases the payment reference was "Expenses" rather than "1" or "2". In several cases there was no identifiable Sage reference material. No entries were made on the Sage system after 25 June 2012, so that system is of no assistance thereafter.
15. The liquidators prepared a schedule of the items challenged (bundle C/tab 25/p1). There were originally 40 items on it (numbered 1-39 plus an item 35a). Six further items were added after further examination of the records. I allowed this although there was no formal amendment, since the cases of the parties were in effect set out in the evidence in any event and Mrs Lawson had ample notice of the new claims and opportunity to respond.
16. The claims can be separated into a number of categories.

Salary and Motor expenses

17. Most of the items remaining, in numerical terms, were said by Mr. Lawson to relate to motor expenses, and most of them relate to costs associated with a Mercedes Benz R class vehicle that was regarded as Mrs Lawson's car, including the monthly finance payments for it and the costs of insurance, servicing, replacement of tyres and the like, and fuel.
18. Some of the motor expenses claims were said to be in respect of Mr. Lawson's expenses rather than Mrs Lawson's, notwithstanding they were given payment references appearing on the bank statements suggesting they were intended for her, such as "C Lawson Expenses". In those cases it was said that by examining backup

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documents or the Sage entries it could be seen they were in fact reimbursement of expenses incurred by Mr. Lawson. Mrs Lawson denied that she had claimed for fuel used, saying that fuel was claimed for her car only when in fact driven by her husband for business purposes. Mr. Weaver did however establish in cross examination that this cannot have been so and at least some fuel claims must have been for fuel used by Mrs Lawson.

19. The overall case put was that insofar as payments were made for Mrs Lawson's car or the expenses of running it, she was entitled as part of her package of benefits as an employee to be provided with a car at the company's expense, and this was not a transaction at an undervalue. Insofar as payments were made for Mr. Lawson's expenses, they were not transactions with Mrs Lawson at all.
20. Mrs Lawson had no written contract of employment, and no similar form of documentary evidence was produced, such as a statement of terms, tax return or statement of benefits in kind. Mr. Lawson's evidence was that the arrangements were purely oral. He was asked about his wife's salary payments, which according to the Sage system were at a rate of £155 per hour but with no record of hours worked, and said that in fact the £155 was not an agreed hourly rate but simply entered because Sage required an hourly rate figure; he decided from month to month what remuneration would be paid to himself and his wife according to how busy they had been but without any detailed calculation.
21. Mr. Lawson produced at the trial a copy of the HP agreement for the car, showing that it was a contract made by him personally in 2009, so well before the company came into existence.
22. The liquidators do not challenge the salary payments made to Mrs Lawson, but say that payments for a car for her cannot be justified and must be transactions at an undervalue because a part time book keeper such as she was had no need to travel on the company's business at all. Nor was it seriously challenged that Mrs Lawson was contractually entitled to provision of a car and payment of its expenses as part of her remuneration. It is of course no objection to the existence of such an entitlement that the arrangements were oral; that is very commonly the case in small and family run companies. Any question whether the remuneration package provided was genuinely in respect of services provided to the company, or represented more than a proper payment for the value of those services is a separate matter.
23. Nor does it matter that if Mrs Lawson was contractually entitled to be provided with a car, that provision was made by way of payment for a car already let on HP terms to her husband. It was one point suggested that in fact this constituted payment of a benefit to Mr Lawson, since he was liable for the HP payments, but of course if that was the proper analysis those payments would not represent any transaction with Mrs Lawson at all.
24. It is not in doubt that Mrs Lawson did some work for the company, and was responsible for maintaining the Sage system and the entries on it. I have no evidence however of the amount of work she did, nor of the realistic commercial value of such work, and accordingly I am not in a position to make any assessment as to whether the value of that work was exceeded, and if so whether it was substantially exceeded, by the total value of the remuneration package she was provided with.

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25. It is not in my judgment possible to take a single element of an employee's remuneration package such as the provision of a benefit in kind and say that the provision of that benefit must be a transaction at an undervalue because the nature of employment did not require that the employee must be provided with that particular benefit. I do not say that a case cannot be made that a remuneration package is so far in excess of the commercial value of the services provided by an employee that it amounts to a transaction at an undervalue, but the assessment to be made must be by comparing the whole value of the package against the whole value of the services provided. If, for instance, those two values were approximately equal, it would not matter whether the employee agreed to be remunerated primarily by the provision of a car for which he had no business need, rather than by salary.
26. In those circumstances, it seems to me that there is no evidential basis on which I can properly conclude that any of the payments made in respect of the HP costs of the car or motoring expenses amounted to transactions at an undervalue with Mrs Lawson. It is unnecessary to go through all of the payments and reach conclusions as to whether they were in respect of Mr Lawson's expenses or those of Mrs Lawson; if the former they were not transactions with Mrs Lawson at all and if the latter they were part of her remuneration package and it is not been shown that provision of that package, as a whole, constituted a transaction at an undervalue.
27. That conclusion disposes of the claims made in respect of the following items in the liquidators' list: 3,4,7,8,9,19,33,35,35a,38,40 (one cheque for 3 items),41 (except £5,000 rent payment) and 42-46.
28. Item 36 (£1,332.23) has the payment reference "C Lawson Expenses" with no Sage documentation to indicate whether it was in fact intended for Mrs Lawson or Mr. Lawson (as he asserted). The amount is consistent with other expenses claims and accordingly I find it was for expenses, and for the reasons above it does not matter whose expenses they were.
29. Item 17 is a payment of £1,460.47, said in Mrs Lawson's witness statement to be in respect of Mr Lawson's motor expenses. When asked about this in evidence, Mr Lawson said that from the Sage references that payment had been posted to payroll rather than expenses, and that the witness statement had been in error.
30. Item 18 is a payment of £1767.40, again said to be Mr Lawson's expenses. He produced a schedule itemising expenses claimed by him for the month of December 2011, in that total amount. Mr Smith in his witness statement pointed out that the same figure appeared to have been paid twice, on 20 and 20 January 2012. That apparent discrepancy was not however put to Mr Lawson in cross examination, so I do not know if he might have had an explanation for it.
31. Item 22 is a payment of £4623, again explained as Mr Lawson's car expenses. There is no schedule supporting that specific amount, but Mr Lawson referred to a ledger showing various expenses claims (24/28) and said that it was probably composed of a number of the individual months' expenses shown in that list. In the end, Mr Weaver did not press specifically the amounts claimed at items 17, 18 or 22, so I make no order in respect of them.
32. Item 32 is a payment of exactly £1000, described on the bank statement as "C Lawson expenses". In her witness statement Mrs Lawson said that this was in fact Mr Lawson's expenses, rather than her own. When asked about this and why it was a

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round sum, Mr Lawson said that it was probably a payment on account. I do not find this particularly convincing, since there are no other examples of payments on account of expenses and Mr Lawson's evidence in other respects was that expense claims were built up in detail on monthly forms and claimed by submission of those forms. However, again Mr Weaver did not press any point about this particular payment, so I give Mr Lawson the benefit of the doubt and accept his explanation.

33. Item 32 for £2 was not pursued.

Lump sum payments

34. The liquidators seek recovery in respect of a number of lump sum payments to the joint account set out below. In each case they seek an order that Mrs Lawson repay half the amount, on the basis that she is a joint beneficiary with Mr. Lawson.

Item	Date	Amount	Bank statement detail	Sage reference
11	14/11/2011	8900	C Lawson 1	SL
13	04/12/2011	10000	C Lawson 1	
20	31/01/2012	2500	C Lawson 1	
26	25/03/2012	5000	C Lawson 1	

35. Mr. Lawson's evidence was that he was in the habit of making payments personally to suppliers and others on behalf of the company and reimbursing himself by payment to the joint account. All these payments he said could be explained by tracing the entries on the Sage system, which would for instance show the nominal code to which the payment had been posted. The liquidators accepted in principle that such payments were made and withdrew claims in respect of a number of items for which either they were able themselves to match payments made out of the joint account to payments in to that account or Mr. Lawson provided an explanation that they accepted.
36. These four items remained because the liquidators were unable to find an explanation themselves and either Mr. Lawson had failed to provide one at all or the liquidators had been unable to verify it from the records. Mr. Lawson has had ample opportunity to provide such explanations and to have access to the company's records if he needed it to do so. The first trial date was adjourned at his request precisely so that he could inspect those records for that purpose, which was necessary because he had previously adopted the position that all the information was there for the liquidators to find and he should not be required to do their job for them. He said that he had been to the liquidators office on three occasions but had only been shown paper records. He said he had a copy of the Sage database, but said he did not have the Sage software himself that would allow him to produce reports and had not been given access to that software by the liquidator.
37. This however was misleading. Mr. Lawson accepted that he had not asked on any of his visits for access to the Sage system. If he thought he needed that access, I am sure he would have done so. He was in any event able to produce some Sage printouts as part of his own evidence, so I do not accept that he was unable to obtain information from the Sage database he possessed, if necessary to explain any payment.
38. Mr. Lawson had no explanation for the £8900 paid on 14 November 2011. He said he could see it had been posted to a suspense account and said it would be expected to be posted on from that account to the "proper account". He could not say what account

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that would be, and in the end could only say he thought he had explained all the transactions and must have missed this one.

39. The payment reference "C Lawson 1" and Sage reference "SL" suggest that this payment was considered to be made to Mr. Lawson. However in the absence of any explanation as to what it was, or, if it was to be a gift or distribution, of any specific intention to make such a gift or distribution to Mr Lawson alone, this is not sufficient. It could mean no more than that the entries were made by Mr. Lawson, or that any queries about them should be addressed to him. In my judgment this unexplained payment must be considered as in effect a gift to those who actually received it, ie to both joint account holders.
40. The £10,000 paid on 4 December 2011 has been marked in manuscript on the bank statement with the reference "K2" which Mr. Lawson said referred to a supplier called K2 Greetings. He was able to produce a Sage printout of the company's ledger account with K2 Greetings (24/13) and said that he had been in the practice of making round sum payments on account to K2 Greetings from his personal credit card and then seeking reimbursement from the company when the credit card bill arrived. He produced redacted copies of his credit card statements showing four payments of £10,000 each to K2 Greetings in September and October 2011 (24/6, 7, 8). He said that the payment challenged probably corresponded with an entry on the K2 ledger which, although it is difficult to read, can just be made out to have been entered on 5 December 2011 and to record a "payment on account" of £10,000.
41. Although Mr Lawson had not given this account at first when plainly he could have done, and had not attempted to reconcile all the payments he made to K2 Greetings with all the reimbursements to him (which would be necessary in order to be satisfied that they corresponded) on balance I accept his explanation. I have been able to identify from the full list of Sage transactions (bundle tab 17) four payments out of £10,000 each with the reference "K2GREE", two of which (transactions numbered 1313 and 1314) were paid on 31 October 2011, and so may plausibly be reimbursement of credit card payments to K2 made in September and shown on a card statement delivered in October, and the remaining two (transactions 2322 and 2554) were made on 5 and 10 December 2011 and so may be plausibly reimbursement of credit card payments made in October and shown on a statement delivered in November. Accordingly I make no order in respect of the £10,000 payment.
42. The £2500 payment appears to correlate with a payment recorded in the Sage transaction schedule as "IntGreet payment on account" (Tab 17, transaction no 3689). Mr. Lawson said that this referred to International Greetings which was a supplier and that although it was possible he had paid them direct "it wasn't normally done like that". He accepted he had no evidence that he had in fact paid that amount to International Greetings so as to be entitled to reimbursement. In the circumstances and bearing in mind all the evidence, I do not accept the mere fact that the payment was labelled as relating to International Greetings as reliable evidence that Mr. Lawson was entitled to be reimbursed for such an amount, and conclude that it too should be treated as a gift to the joint account holders.
43. The £5000 payment is shown as being made on 25 March 2012. Mr Lawson's explanation of this is that it is a reimbursement of £5000 transferred to the company's account from a joint account of Mr and Mrs Lawson with Coutts bank on 23 March. He had produced a redacted copy of a statement on the Coutts account showing these two transactions and in the witness statement which he prepared for Mrs Lawson (and

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adopted at trial his own evidence) said that one was a reimbursement of the other. He did not explain why £5000 had been transferred into the company only to be repaid two days later.

44. The liquidators however have obtained an unredacted copy of the relevant page of the statement on the Coutts joint account (25/8) which shows three transactions for £5000, not two. £5000 is paid into the company on 23 March but there is a matching payment back from the company of the same amount on the same day. A second payment of £5000 is made from the company to the Coutts account on 26 March. When asked why he had provided a copy of the statement redacted so as to conceal the first payment by the company, Mr Lawson gave an evasive response, saying that he had not been asked about that payment. He had no explanation now for the earlier payment. He accepted of course that the £5000 paid to the company could only possibly be an explanation for one of the two payments back. Looking at the statement showing the three payments, the obvious inference would be that the two payments made on the same date, 23 March, cancel each other out, which leaves no explanation for the second payment made two days later. In the end when asked why he had claimed credit against the second payment, Mr Lawson could only say "maybe I shouldn't have".
45. This redaction can only have been done deliberately, and in my view was an attempt to deceive the liquidators, presumably in the hope that they did not know about the first of the two payments out and so would believe that there were only two transactions, which cancelled each other out.
46. I find therefore that there is no explanation the payment of £5000 on 5 March 2012, and it too is to be treated as a gift to the joint account holders.

Rent payments

47. Two lump sum payments of £4000 and £5000 were made into the joint account and described in the Sage entries as "HO rent". The explanation given in Mrs Lawson's witness statement was "rent of space at the farm. Approximately 1500 ft.² for the storage of various shop fittings. This was indoor space and equates to £8 per square foot per annum. Outside rental space costs between £6 and £12 per square foot plus utilities and rates." The farm referred to is Mr and Mrs Lawson's home.
48. In his oral evidence, Mr Lawson said that the space occupied was two large office rooms, which at one point had been used by company staff but now contained only various shop fittings and stock. He said it was necessary to store stock at their home because the council had objected to the amount of material contained in the company's own premises. It did not appear, however, that Mr Lawson had at any point disclosed to the liquidator the existence of any assets located in their home, which of course it was his duty to do as a director of the company with an obligation to assist the liquidators in performing their functions. Nor was there anything in the company's records referred to in order to confirm that the company had, or needed to, rent such space.
49. Mr Lawson, I am satisfied, has throughout followed a policy of avoiding the provision of information for as long as he can, and when there is no alternative, providing the very minimum he thinks he can get away with. He failed to provide a Statement of Affairs to the liquidator, notwithstanding he is obliged to do so. When asked about this, he gave an evasive answer, saying that although he had not in fact provided such

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a statement, he had not refused to do so. He said that 90% of a Statement of Affairs was the production of accounts, and that he had handed over all the accounting information to the company's administrators. That of course misses the point; a principal purpose of a Statement of Affairs is to verify the company's accounting records and provide any information that is not contained in those records. The undocumented existence of what he appears to contend to be a substantial quantity of stock and shop fittings owned by the company at his own house would be one example of the information he should provide.

50. When asked for information to explain the transactions called into question, both in respect of himself and his wife, prior to and during these proceedings he maintained the stance for a long time that he should not be required to provide any such explanation and that it was up to the liquidators to look into the company's accounting records and obtain it for themselves. That was not consistent with his duty as a director to assist the liquidators and in my view was calculated to obstruct them and likely to have been a deliberate strategy in the hope that the liquidators would give up. The first hearing of the trial had to be adjourned when it was made clear to Mr Lawson that it was necessary for him (on behalf of Mrs Lawson) to provide an explanation, in order that he could have access to the company's records to do so. When information was provided, it was done in a minimal and grudging way, without locating or even identifying the majority of the documents said to exist in the company's records to support the explanations given. Mr Lawson considerably amplified his explanations in his oral evidence at trial, producing some further documents but still referring to others which he said existed but had not obtained. By that time, of course, it was in practice impossible for the liquidators to seek to verify the explanations he was producing.
51. The absence of a full explanation is particularly concerning in the context of the routine practice of payments of large amounts between accounts maintained by the company and Mr and Mrs Lawson's personal bank accounts. Unless it is possible to obtain a full picture of all these payments, there is a considerable risk that such a pattern might be used to disguise a process of extraction of cash from the company at the expense of its creditors. It is quite possible that this is what lay behind the three rapid movements of £5000 between two accounts referred to above. Mr Lawson gave no good explanation for this. His attempt to conceal it by presentation of carefully redacted bank statements strongly suggests that there is no good explanation, and that I should be very careful indeed before accepting Mr Lawson's unsupported and undetailed explanations of other transactions. The same may be said in relation to the similar apparent double reimbursement of sums of £9998 and £6000 referred to below.
52. In those circumstances, I am not satisfied that I can rely on Mr Lawson's explanation to conclude that the company received any consideration from Mr & Mrs Lawson to support the payments to them labelled as rent. I find, therefore, that those payments amounted to transactions at an undervalue. They were acknowledged to be paid to Mr. & Mrs Lawson jointly, so she is to be treated as having received half.

Credits claimed

53. Mr Lawson pointed to various sums shown in the bank statements to have been paid in from his and his wife's accounts to that of the company or paid on its behalf, and said that to the extent that I found that there were any unexplained amounts paid out to them, the amount of these credits and payments should be set off against it. He

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produced a statement showing that he claimed credit for amounts totalling over £97,000. The liquidators' evidence was that they had been through all the credits paid by Mr. & Mrs Lawson to the company's account, and allocated them against payments out where it appeared that they matched. In the absence of an explanation for the individual items claimed as credits or a full reconciliation of all the payments between the Lawsons and the company it was not possible to say that they were entitled to any credit for these individual items.

54. In my judgment, the liquidators' position is correct. To the extent that Mr Lawson (on behalf of Mrs Lawson) seeks to establish a credit, it is for him to produce the evidence that the payments for which he seeks credit have not been reimbursed or accounted for in some other way. This cannot be done simply by pointing to certain individual payments when they form part of a considerable number going both ways, and the dangers are illustrated by the way in which Mr Lawson sought to manipulate the evidence in relation to the £5000 payments. Mr Weaver was able to show two further examples of what appeared to be double reimbursement, in that the liquidators had allowed credits for sums paid in of £9998 and £6000 against payments out of the same amounts, but it later emerged when full copies of the bank statements were provided that in both cases Mr Lawson had already been reimbursed for these amounts. He appears therefore to have paid himself twice over on at least these three occasions.
55. Mr Lawson said that this might have happened accidentally, but it would not matter because all the payments would be entered on a ledger on the Sage accounting system and could be reconciled from that. He referred to a nominal account balance showing him to be a creditor of the company for £50,000, but he has not provided a statement on that account, or previously suggested that all the transactions between the company and the joint accounts are taken into account in that balance. If there is some other ledger balance maintained he has not provided or identified it, nor has he suggested at any earlier stage that it could be obtained, though it would obviously have been relevant. I have no doubt that if he had thought that such a reconciliation would assist his case he would have demanded that the liquidators produce it, or asked for facilities to do so himself when he visited their offices. I do not accept his attempt to explain his failure to make such a request by saying he did not think that the terms on which he was permitted to inspect the company's records included access to the Sage system.
56. Mr Weaver was also able to demonstrate that several if not all the other amounts for which Mr Lawson sought credit could be seen to have been reimbursed to him. In the circumstances, he suggested to Mr Lawson, it was ridiculous to seek a credit for £97,000 when most or all of the items going to make up that amount had already been reimbursed. Mr Lawson's response was that he was not in fact seeking a credit of £97,000, although he plainly had been.
57. In the circumstances I am not satisfied by Mr Lawson's evidence that he has established any entitlement on Mrs Lawson's behalf to credit against the sums claimed against her, and I decline therefore to allow any such credit.

Conclusion

58. There will be an order for Mrs Lawson to repay to the company the benefit she obtained from the transactions I have found to be at an undervalue, being 50% of their value. Those transactions were for a total of £9,000 in respect of rent payments and £16,400 for the various lump sums. Half of the total is £12,700.

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59. I will list a hearing at which this judgment will be handed down. There need be no attendance if the order resulting can be agreed. If there are matters arising I will deal with them on that occasion if they require no more than 30 minutes; in any other event parties should seek to agree a time estimate for a later hearing. If there is any hearing, either at the handing down or later, for the avoidance of doubt I make clear that I will allow Mr. Lawson again to speak on behalf of his wife if she wishes, but she must attend herself.