Case No: CR-2015-006989

Neutral Citation Number: [2019] EWHC 1599 (Ch)

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

Rolls Building
7 Rolls Building
Fetter Lane
London, EC4A 1NL

Wednesday, 5th June 2019

Before:

THE HONOURABLE MR JUSTICE MARCUS SMITH
(Sitting in private: the Judgment itself is open for publication)

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Between:

(1) MR PAUL COOPER **(2) MR DAVID RUBIN** **(as court-appointed receivers over various assets as defined in the order of Mr Justice Marcus Smith dated 20 February 2019)**	**Applicants**
- and -	
VB FOOTBALL ASSETS	**Petitioner**
- and -	
(1) BLACKPOOL FOOTBALL CLUB (PROPERTIES) LIMITED **(formerly Segesta Limited)** **(2) OWEN OYSTON** **(3) KARL OYSTON** **(4) BLACKPOOL FOOTBALL CLUB LIMITED**	**Respondents**

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MR MARK PHILLIPS, QC and **MR ANDREW SHAW** (instructed by **Stephenson Harwood LLP**) appeared for the **Applicants.**

MR FRASER CAMPBELL (instructed by **Clifford Chance LLP**) for the **Petitioner.**

MR MATTHEW COLLINGS, QC and **MR GC DARBYSHIRE** (instructed by **Haworth Holt Bell LLP**) appeared for the **Second Respondent**

Hearing date: 5 June 2019

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Approved Judgment

MR JUSTICE MARCUS SMITH:

1. This action originated in an unfair prejudice petition under section 994 of the Companies Act 2006. The petition was brought by the Petitioner, VB Football Assets ("VBFA"), against four respondents. The Fourth Respondent was Blackpool Football Club Limited, which was joined simply in order to ensure that it was bound by the result. VBFA owned, and perhaps still owns, some 7,500 ordinary shares in the Fourth Respondent, amounting to some 20% of the shareholding. Apart from some very minor shareholdings held by third parties, the rest of the shares in the Fourth Respondent are held by the First Respondent.

2. The First Respondent is a company formerly known as Segesta Limited. It has since changed its name to Blackpool Football Club (Properties) Limited, but I shall continue to refer to it (as I have done throughout these proceeedings) as "Segesta".

3. The Second Respondent is Mr Owen Oyston, who owns 97.2% of Segesta, the First Respondent. The Third Respondent is Mr Owen Oyston's son, Mr Karl Oyston. Mr Karl Oyston does not play an active role in this present matter and I need not refer to him any further. I shall therefore refer to the Second Respondent as "Mr Oyston".

4. In this ruling, save where the contrary is stated or the context otherwise requires, "Respondents" refers to the First, Second and Third Respondents only.

5. In a judgment dated 6 November 2017, Neutral Citation Number [2017] EWHC 2767 (Ch), I determined the petition. I shall refer to that judgment as the "Judgment". It will be necessary to refer to parts of the Judgment in due course. I should, however, make it clear that I take the Judgment, as well as all my subsequent rulings in these proceedings, as read.

6. The order that I made consequent upon the Judgment (also dated 6 November 2017) contained a number of provisions. Paragraph 1 of the order provided:

   "The First to Third Respondents shall purchase the 7,500 ordinary shares of £1 each in the capital of [the Fourth Respondent], presently registered in the name of the Petitioner, for a sum of £31,270,000."

   In addition to this sum of £31 million-odd, there was an obligation on the Respondents to pay both costs and interest, which increased sum due to VBFA.

7. In terms of when payment should be made by the Respondents, my order provided as follows

   "7. The First to Third Respondents shall pay the Petitioner the sum of £10 million by 4 pm on 4 December 2017 which will represent satisfaction in full of the payment on account of costs ordered in paragraph 6 above, with the balance being a payment on account of the purchase price ordered in paragraph 1 above.

   8. The First to Third Respondents shall, by 4 pm on 20 November 2017, apply for a further order specifying the dates for payment of the balance of the purchase price ordered in paragraph 1 above, and of the sums ordered in paragraphs 2 and 3 above, such application to be reserved to Mr Justice Marcus Smith. In the event that no such application is made by the First to Third Respondents, the First to Third Respondents shall pay all such outstanding sums by 4 pm on 4 December 2017."

8. The payment timetable was addressed with greater particularity in a later order. In an order sealed on 22 December 2017, a timetable was set out in paragraph 1 which provided for payments in instalments: £10 million by 4 pm on 31 January 2018; £7,500,000 by 4 pm on 30 March 2018; and £7,109,054 by 4 pm on 31 May 2018. This payment timetable took into account the fact that, as required by paragraph 7 of my order 6 November 2017, the Respondents did indeed pay the sum of £10 million by 4 pm on 4 December 2017.

9. However, the Respondents did not make any of the following instalments as directed by my order sealed 22 December 2017. As a result, after the January 2018 instalment had not been paid, by an order dated 6 February 2018, I set aside or varied the terms of my previous orders and directing that the unpaid balance of the purchase price be immediately due and payable to VBFA, who might pursue enforcement steps in respect of it and any accrued interest as at the date of enforcement as so advised.

10. So much for the orders as regards payment by the Respondents to VBFA. There are other provisions in the orders that I made that it is necessary to refer to. My order of 6 November 2017 contained, in paragraph 25, a general liberty to apply. The scope of that liberty was itself later clarified by an order dated 6 December 2017, which made clear (in paragraph 5) that paragraph 25 of the 6 November 2017 order was varied by the addition of the following sentence:

> "For the avoidance of doubt, the foregoing includes permission for the Petitioner to apply for the payment of sums by the First to Third Respondents otherwise than as specified above."

11. As I noted earlier, in December 2017, the Respondents paid some £10 million to VBFA, reducing the sum outstanding as at the 9 May 2019 to £25,693,958.23. No further sums have been paid voluntarily by the Respondents, and the Respondents are clearly in breach of the obligation to pay the balance of the £31 million-odd that was, and is, outstanding.

12. Since the Respondents' breach of the orders of this court, various efforts at enforcement have been made, culminating in the appointment of receivers by way of equitable execution (the "Receivers"). Apart from the appointment of the Receivers, which I will have to refer to in greater detail, it is unnecessary for me to summarise these efforts at enforcement, save to note that they were substantially unsuccessful.

13. It was because of that lack of success that VBFA sought the appointment of the Receivers. When that application was in due course made, I granted it for the reasons set out in my ruling of 13 February 2019, Neutral Citation Number [2019] EWHC 530 (Ch). The order appointing the Receivers is similarly dated 13 February 2019.

14. Essentially, the Receivers were appointed over what I termed the "footballing assets", by which I meant the assets related to or relating to the Fourth Respondent. It is necessary to use a term as elliptical as "assets related to or relating to the Fourth Respondent" because the Fourth Respondent does not itself actually own all of the

assets it needs to operate as a football club. It does not, for instance, own the ground at which it plays, which is owned by Segesta. I explained the somewhat convoluted circumstances in which the Fourth Respondent operated in [37]*ff* of the Judgment.

15. The order appointing the Receivers contains a list of receivership interests, set out in the annex to the order, which identifies the assets which the receivers are entitled to get in and sell. These assets are all linked, essentially, by the fact that they are needed by the Fourth Respondent to operate as a football club. So, despite their disparate nature, the assets that the Receivers have authority to get in and sell, is the football club, which is something more than, but obviously includes, the Fourth Respondent.

16. The order appointing the Receivers contains, as it were, an element of double counting in the annex listing the receivership interests. Thus, the shares in Segesta, the First Respondent, owned by Mr Oyston, the Second Respondent, can be sold (Item 1 in the annex), but so too can the assets of Segesta (e.g. Item 4). Such a sale would naturally affect the value of Mr Oyston's shareholding in Segesta. So, there is obviously a nexus between the assets listed in the annex. Equally, as we shall see, not all of the assets that the receivers have authority to get in and sell in fact need to be sold in order to enable the Fourth Respondent to operate as a football club. As will be seen, the Receivers are proposing a sale of assets that does not in fact include Mr Oyston's shares in Segesta.

17. I am going to refer to the assets that the Receivers are selling (and which sale they are seeking the court's approval for) as the "Club". That is because this is the reality of the matter. It has always been felt, as my ruling of 13 February 2019 makes clear and as the Receivers' evidence before me today confirms, that a better price could be obtained by selling the Club as a going concern rather than by selling the receivership assets separately in an asset sale.

18. The Receivers have, since their appointment, been active and have brought the Club to a point where it can be sold. I do not intend to describe the sale process in detail, but it is necessary to set out in broad terms how the process has operated. I shall begin with the description of that process in the first witness statement of Mr Paul Cooper, who is one of the two Receivers appointed by my order, the other being Mr David Rubin. In paragraph 25 of his statement, Mr Cooper says this:

> "On 9 April 2019, a marketing process for the proposed sale was launched by my agents, Hilco. The deadline for formal offers is 15 May 2019. A marketing circular was released setting out the acquisition opportunity, and a data room populated with relevant information as to the finances and assets to be sold. This teaser was provided to all parties who had previously lodged an interest in purchasing Blackpool Football Club to the receivers or VBFA/Clifford Chance, and to a targeted group of potentially interested parties selected from Hilco's database of relevant contacts consisting of around 100 private equity and sports management companies across the world. Each interested party who has since expressed an interest has been vetted and has agreed appropriate non-disclosure terms prior to being given access to the data room to undertake preliminary due diligence. The process has identified a number of credible prospective purchasers which has generated significant follow-up due diligence questions that are being addressed by the receivers and their staff, the boards of the companies, Hilco and LSH in relation to property queries."

"LSH", I should explain, is a reference to valuers instructed by the Receivers, Messrs Lambert Smith Hampton.

19. Moving on in Mr Cooper's statement, at paragraph 27 he says this:

> "I am currently in more detailed negotiations with a smaller number of parties who are considered to be the most credible prospective purchasers. Due to the confidentiality obligations between the parties and the commercial sensitivity of the negotiations, I do not intend to set out details of the discussions, save to address the role that Mr Oyston or his family may play in the club in the future."

20. The role of Mr Oyston and/or his family is addressed in paragraph 28:

> "These prospective purchasers have all told me unequivocally that they will not purchase the Segesta shareholding without VBFA's shareholding for two reasons.
>
> 28.1 They each want to purchase as close to 100% of the shares as possible, taking into account the existence of a number of minority shareholders and the tradition of many minority shareholders in Blackpool FC.
>
> 28.2 Second and most importantly, they are not prepared to have Mr. Oyston as a partner in the Football Club in the event that the outstanding judgment debt was paid to VBFA, and the VBFA shareholding was transferred to Mr. Oyston by operation of the buy-out order."

21. The significance of the 20% minority shareholding presently held (or said to be held) by VBFA immediately becomes clear. By paragraph 1 of my order of 6 November 2017 (see paragraph 7 above), I ordered that the Respondents purchase this shareholding, presently registered in the name of VBFA, for a sum of £31,270,000. This order, and its implications, will have to be considered in due course in this ruling.

22. The Receivers have taken specialist valuation advice from LSH in order to obtain a ballpark estimate of the Club's value. Necessarily, this valuation has been undertaken on the basis of a number of assumptions regarding cash flows which are not necessarily borne out by the Club's present circumstances. The Receivers have concluded that the Club could properly be sold for a sum in the range of A to B. I make it clear that I have the figures before me in the evidence, but I am going to anonymize those figures in the interests of enabling this judgment to be made public. (The hearing before me was, by my order of 14 May 2019, conducted in private.)

23. The prices in the range A to B are based on the 20% minority shareholding in the Fourth Respondent, which is the subject of paragraph 1 of my 6 November 2017 order, being included in the sale. Unless these shares are included in the sale, then a sale price in the range A to B will not be achieved. Indeed, it is unlikely that the sale would go ahead at all, for the reason given in paragraph 21 above.

24. Even if the best price for the Club is achieved, that is to say, B, at the top end of the range, and the other known assets of the Respondents are also sold, that is to say, non-footballing assets, there will still be a very considerable shortfall in terms of the moneys due and owing to VBFA by the Respondents. Again, out of deference

to the confidentiality of these matters, I will not mention specific amounts, but I think I can safely say that the shortfall will be several millions. Accordingly, even if this sale of the Club is achieved, and a proper price is obtained for the other known assets of the Respondents, there will continue to be a very considerable shortfall. (I refer quite deliberately to "known" assets. The affairs of the Respondents are opaque and although a freezing regime has operated since the Judgment, it has only applied to those assets that VBFA has been able to identify.)

25. I turn then to the outcome of the sales process as described by Mr Cooper. Mr. Cooper's later statements are all expressed to be confidential, and what I will do is that I will seek to paraphrase their content so as to preserve confidentiality whilst maintaining comprehensibility.

26. What Mr Cooper has said in his confidential second witness statement is that three bids have been produced as a result of the sales process conducted by the Receivers. I shall refer to these three bids as "Bid 1", "Bid 2" and "Bid 3". I shall refer to the persons making the bids as "Bidder 1", "Bidder 2" and "Bidder 3". Bid 1 is an offer to purchase the Club for a consideration that lies between A and B. It is fair to say that the price is closer to A than it is to B, i.e. it is at the lower end of the range. The person behind the bid, Bidder 1, has conducted substantial due diligence and, in terms of his background, is someone who clearly has an affinity for the Club and who is, therefore, satisfactory to the Receivers as a buyer, not simply in terms of being willing to pay a sum within the range identified by the Receivers as acceptable, but also is born and raised in Blackpool and is a lifelong supporter of Blackpool Football Club. What is more, Bidder 1 has set out in some detail his vision for the Club and the Club's management, including engagement with fans, an academy, investment in the stadium and pitch and training facilities. These are, unsurprisingly, all key issues identified by the board of the Fourth Respondent as being key to the future of the Club.

27. Bid 2 is an offer for a purchase of the Club at a nominal amount. The bidder behind Bid 2, Bidder 2, has not entered the data room to begin due diligence and has not, therefore, conducted any due diligence.

28. Bid 3 is an offer to purchase the Club for a sum again closer to A than B in the range but, in any event, the price offered by Bidder 3 is lower than Bidder 1's offer. Some clarification has been provided in terms of the nature of the bid, and a degree of due diligence has been undertaken by Bidder 3. There may be complications in respect of Bidder 3's interests in another football club which might cause difficulties in terms of the English Football League ("EFL") approving him as a proper person to own a second club.

29. It is the Receivers' position that Bidder 1 is the preferred bidder. The reasons for this have been explained by Mr Cooper in his second confidential statement. What he says in paragraph 26 of that statement is that the receivers consider Bid 1 to be the most attractive bid and have chosen to proceed with it for the following reasons:

    i) Following a six-week marketing process, Bid 1 is higher than any other bid.

ii) Proof of funds has been provided by Bidder 1, which is not the case with the other two bidders.

iii) Bidder 1 and his advisers have spent over 100 hours in the data room reviewing documents, and there have been two lengthy and substantive rounds of disclosure questionnaires. This is strong evidence of Bidder 1's commitment to the transaction.

iv) Bid 1 is, in the Receivers' judgment, most likely to be consummated into a formal transaction in a timetable which can accommodate the Club's financial requirements.

30. Pausing there, I should say two things about the urgency of a sale. There are two reasons for this:

i) As Mr Cooper says in paragraph 36 of his second confidential statement, at the moment the Fourth Respondent has need of significant funds in the period May to October 2019, which it does not have. That money must come from somewhere. In reality, it will have to come from a purchaser of the Club. So, there is that degree of urgency, in that unless there is a sale in the short term the Fourth Respondent will (to put it no higher than this) face severe financial difficulties. Bidder 1 is aware of this and the fact is that Bid 1 is so far progressed that the contractual documents are at a stage of near completion and it is hoped that, if the court sanctions a sale to Bidder 1, exchange of contracts can occur either today or in the immediate future with completion occurring a few days thereafter.

ii) There is urgency also because the Annual General Meeting of the EFL occurs on 7 June 2019. The reason this hearing was diarised for today was in part to enable the new purchaser of the Club to be represented at this AGM, assuming the transaction is sanctioned by the court.

31. As a result of Bidder 1 being the Receiver's preferred bidder, an exclusivity arrangement has been entered into between Bidder 1 and the Receivers. This arrangement was concluded on or about 20 May 2019. It provides for a period of one month's exclusivity, during which period the Receivers will only speak to and deal with Bidder 1. In exchange for this exclusivity, Bidder 1 has paid over a significant sum, which is returnable only in certain very limited circumstances. Again, this is a factor that underlines the seriousness of Bidder 1's intent and constitutes the fifth reason listed in paragraph 26 of Mr Cooper's statement as to why Bidder 1 is preferred.

32. After the exclusivity arrangement was entered into between the Receivers and Bidder 1, a fourth bid was received. This bid – "Bid 4" from "Bidder 4" – was received on 27 May 2019, which I note was a bank holiday. It stipulated that it required acceptance by 28 May 2019. Bid 4 has been rejected for the reasons given by Mr Cooper in his third statement which, again, is a confidential statement. Mr Cooper gives a number of reasons explaining why the offer from Bidder 4 was rejected by Hilco on the Receivers' behalf. The Receivers took the following points into account:

i) They already had a preferred bidder, in the form of Bidder 1. Bidder 1, for all the reasons I have outlined, represents an extremely attractive counterparty for the Receivers to do business with. Inevitably, dealing with Bidder 4 would involve breaching the exclusivity arrangement with Bidder 1 and would alienate the maker of a really rather attractive offer.

ii) The deadline for the submission of bids was 15 May 2019, and this bid was only received on 27 May 2019.

Pausing there, this second reason is not, to my mind, a critical factor. It is obviously relevant, but had Bid 4 been otherwise astonishingly attractive, it seems to me that the failure to comply with the deadline is a matter that would be on the low end of material factors. However, as I go on to describe, the Receivers have identified other areas of concern in relation to Bid 4.

iii) The window for the acceptance of Bid 4 is very tight. In practice, 24 hours were allowed by Bidder 4 for the bid to be accepted. That is an entirely unrealistic timeframe.

iv) No proof of funds was provided along with the offer.

v) No due diligence of any sort has been undertaken by Bidder 4 because a non-disclosure agreement has not been entered into by Bidder 4.

33. In favour of Bid 4 is the fact that the price offered for the Club is higher than that of Bidder 1, albeit not significantly so. The oddity about the bid is that Bidder 4 is only offering for the shares in the Fourth Respondent owned by Segesta and not for the minority shareholding in the club presently registered in VBFA's name. That, of course, makes the price offered by Bidder 4 relatively higher than that of Bidder 1 although – given the intrinsic difficulty in valuing this interest – it is impossible to say how much better. The Receivers note that, given the importance that all of the other bidders have attached to acquiring the entirety of the shares in the Fourth Respondent – or as close to the entirety of the shares as is possible – this approach by Bidder 4 is a curious one. Why Bidder 4 should seek to preserve the minority shareholding is not explained in Bid 4.

34. The Receivers have, nevertheless, conducted a "desktop" due diligence in relation to Bidder 4. They have identified certain matters – I will say no more than this – which would, if the Receivers were minded to proceed with Bidder 4, require the most careful further due diligence. As it is, given the urgency to complete – which is, of course, yet another factor to take into account, the Receivers did not elect to proceed at all with Bidder 4, but continued to progress negotiations with Bidder 1.

35. In my judgment, that decision is unimpeachable, and I consider that it was entirely correctly made.

36. As I have made clear, Bid 1 envisages the acquisition by Bidder 1 of (amongst other things) Segesta's shareholding in the Fourth Respondent and the minority shareholding of VBFA in the Fourth Respondent. Necessarily, that means VBFA will be a party to the various contracts pursuant to which Bidder 1 acquires the

Club, should the transaction go ahead. It is important to stress that whilst the sale to Bidder 1 involves Bidder 1 acquiring both Segesta's shares and VBFA's shares in the Fourth Respondent, no consideration moves from Bidder 1 to VBFA. The entire consideration payable by Bidder 1 goes to the Receivers, for them to deal with in accordance with their duties.

37. It has been necessary to set out the factual background in some detail. Having done so, I can turn to the three matters that are before the court today. The first is whether the receivers actually need the approval of the court to proceed with the sale to Bidder 1. Secondly, there is the question of how the shares in the Fourth Respondent presently registered in the name of VBFA should be dealt with, and whether this is a matter in relation to which the court should revisit its order of 6 November 2017. Thirdly, and lastly, assuming the answer to my first question is "Yes", the receivers should properly come before the court, and the second question is satisfactorily resolved, should the sale then be approved?

38. I turn then to the first of these three questions. Mr Oyston, through his counsel Mr Collings QC, suggests that court approval is not required. I am not satisfied that he is right about that. When I made orders for sale in respect of various of the Respondents' assets, I put in place certain safeguards for their protection. So far as real property was concerned, I ensured that minimum prices were stipulated, below which VBFA could not sell. So far as shares were concerned, because of the likely complexity of the sale and the valuation difficulties involved, I directed that any proposed sale of shares come back to me for approval before they completed.

39. Such a provision is replicated in the order appointing the Receivers. Paragraph 18 of my order provides:

> "The Second Respondent's 1,604,694 ordinary shares in the First Respondent shall be sold by the Receivers on terms subject to the further approval of the Court following the reaching of an agreement in principle with the proposed purchase or purchasers. In the event that the Second Respondent wishes to rely on any evidence in respect of an application by the Receivers for such approval, such evidence must be filed and served at least seven days in advance of the relevant hearing, failing which such evidence may not be relied on by the Second Respondent without further order of the Court."

40. Mr Collings suggests that this provision does not apply. Strictly speaking, he is right about that. The shares referenced in paragraph 18 of the order are not an asset that the Receivers are seeking to sell as part of the transaction with Bidder 1. They are selling the assets of Segesta and not the shares in Segesta, which is the asset to which paragraph 18 relates. That is because the Receivers, in their judgment, are seeking to package the sale of the Club in the most attractive way, and this is the route that they have chosen.

41. However, the fact that, technically speaking, paragraph 18 does not apply to the assets the Receivers are seeking to sell is, to my mind, missing the point. The existence of paragraph 18 underlines the wider point that I regard the sale of the Club as a matter requiring court scrutiny, as indeed I do. Mr Phillips QC, who appeared for the Receivers, sought to draw an analogy between receivers by way of equitable execution and trustees and administrators.

42. Mr Phillips took me to the decision of Snowden J in *Re Nortel Networks UK Limited* [2016] EWHC 2769 (Ch). In that decision, Snowden J reviewed the obligations and duties on trustees to seek approval of the court for certain transactions. He sought to analogise those duties to the duties of trustees. Mr Phillips' point was that, whilst this case did not concern either trustees or administrators, the position of receivers by way of equitable execution is very similar. He contended that the analogy sought to be drawn by Snowden J as between administrators and trustees ought also to extend to receivers by way of equitable execution.

43. I consider that to be right. The position of the Receivers is very similar to that of trustees and administrators, and I find the analogy drawn by Mr Phillips to be an apt one. I consider that the law as stated by Snowden J in [45] to [49] of *Re Nortel* to hold good here, both in terms of the analogy Snowden J drew between administrators and trustees (which I find also holds good for receivers by way of equitable execution) and in terms of his description of how the court approves (or does not approve) the transactions that come before it for approval:

> "45 In *Re MF Global UK Ltd (No 5)* [2014] Bus LR 1156, David Richards J was asked to authorise a settlement agreement to compromise claims by the company to assets said to be held on its own account, which were also said to be held by the company on trust for its own clients. He addressed the approach to be taken by administrators when seeking to compromise the company's own claims as follows, at [41]:
>
> > "In commercial matters, administrators are generally expected to exercise their own judgment rather than to rely on the approval or endorsement of the court to their proposed course of action: see In re T & D Industries plc [2000] 1 WLR 646 . While the compromise of claims raising difficult legal issues may not be on all fours with a purely business decision, administrators commonly exercise the power of compromise without recourse to the court and in general apply to the court for directions only if there are particular reasons for doing so: see In re Lehman Bros International Europe [2014] BCC 132 ."
>
> 46 One such "particular reason" which might justify administrators applying to the court for directions in relation to the exercise of the power of compromise can be derived by analogy from the second category of cases in which trustees can seek directions from the court. This was identified by Hart J in *Public Trustee v Cooper* [2001] WTLR 901, 922–924:
>
> > "The second category is where the issue is whether the proposed course of action is a proper exercise of the trustees' powers where there is no real doubt as to the nature of the trustees' powers and the trustees have decided how they want to exercise them but, because the decision is particularly momentous, the trustees wish to obtain the blessing of the court for the action on which they have resolved and which is within their powers. Obvious examples of that, which are very familiar in the Chancery Division, are a decision by trustees to sell a family estate or to sell a controlling holding in a family company. In such circumstances there is no doubt at all as to the extent of the trustees' powers nor is there any doubt as to what the trustees want to do but they think it prudent, and the court will give them their costs of doing so, to obtain the court's blessing on a momentous decision. In a case like that, there is no question of surrender of discretion and indeed it is most unlikely that the court will be persuaded in

> the absence of special circumstances to accept the surrender of discretion on a question of that sort, where the trustees are prima facie in a much better position than the court to know what is in the best interests of the beneficiaries."

47 The instant case is, in my judgment, just such a case. In signing the documents comprising the global settlement, the administrators and the conflict administrator have already decided that the global settlement is in the best interests of each of the EMEA Companies and their creditors. They do not propose to surrender the exercise of their discretion in that regard to the court, but they seek the approval of the court because of the great significance of the global settlement in the context of the administrations of each of the EMEA Companies. Given the size and complexity of the affairs of the Nortel group and the amounts in the Lockbox, there can, in my judgment, be no doubt that the execution of the global settlement is a truly momentous decision.

48 In a category two case involving trustees, the approach of the court was summarised by David Richards J in *In Re MF Global UK Ltd (No 5)* [2014] Bus LR 1156, at [32], where he cited with approval the following from *Lewin on Trusts*, 18th ed (2008), para 29-299:

> "The court's function where there is no surrender of discretion is a limited one. It is concerned to see that the proposed exercise of the trustees' powers is lawful and within the power and that it does not infringe the trustees' duty to act as ordinary, reasonable and prudent trustees might act, ignoring irrelevant, improper or irrational factors; but it requires only to be satisfied that the trustees can properly form the view that the proposed transaction is for the benefit of beneficiaries or the trust estate and that they have in fact formed that view. In other words, once it appears that the proposed exercise is within the terms of the power, the court is concerned with limits of rationality and honesty; it does not withhold approval merely because it would not itself have exercised the power in the way proposed. The court, however, acts with caution, because the result of giving approval is that the beneficiaries will be unable thereafter to complain that the exercise is a breach of trust or even to set it aside as flawed; they are unlikely to have the same advantages of cross-examination or disclosure of the trustees' deliberations as they would have in such proceedings. If the court is left in doubt on the evidence as to the propriety of the trustees' proposal it will withhold its approval (though doing so will not be the same thing as prohibiting the exercise proposed). Hence it seems that, as is true when they surrender their discretion, they must put before the court all relevant considerations supported by evidence. In our view that will include a disclosure of their reasons, though otherwise they are not obliged to make such disclosure, since the reasons will necessarily be material to the court's assessment of the proposed exercise."

Similar (albeit expanded) observations appear in the current 19th ed (2014) of *Lewin on Trusts*, paras 27-079–27–081. Reference can also be made to the decision of Henderson J in *Hughes v. Bourne* [2012] WTLR 1333, at [16].

49 For my part, whilst noting that the position of an administrator seeking directions under the Insolvency Act 1986, and a trustee seeking directions under the Trustee Act 1925 are not identical, I see no obvious reason why most of the same considerations should not apply when the court considers giving directions to an administrator who wishes to enter into a compromise which is particularly momentous. In short, the court should be concerned to ensure that the proposed

> exercise is within the administrator's power, that the administrator genuinely holds the view that what he proposes will be for the benefit of the company and its creditors, and that he is acting rationally and without being affected by a conflict of interest in reaching that view. The court should, however, not withhold its approval merely because it would not itself have exercised the power in the way proposed."

44. Receivers by way of equitable execution do – unlike trustees and administrators – have the benefit of specific provisions explicitly conferring on them the right to seek directions. Such receivers are court-appointed pursuant to an equitable jurisdiction. That fact, as it seems to me, should not preclude a receiver by way of equitable execution seeking the court's approval in an appropriate case.

45. I will consider whether the transaction proposed by the Receivers – namely the sale of the Club to Bidder 1 –should be approved by the court at the end of this ruling. For the present, I hold that the decision and question of whether, and on what terms, to sell the Club, is a momentous decision, one that is enormously important both for Mr Oyston and for VBFA. Therefore, the Receivers have acted, in my judgment, entirely appropriately in making this application. So, I conclude that in answer to question 1, the Receivers both have the right to seek the court's approval for this transaction and that they have, in this particular case, acted appropriately in bringing this matter before the court. This is an application that I can and should entertain.

46. Mr Collings, in his submissions, laid great stress on the fact that, at least in the case of trustees and administrators, a degree of immunity follows if the court sanctions a particular transaction. That is not a question that is before me today. Logically, it follows from the analogy I have drawn with *Re Nortel*, but it is unnecessary for me to decide that point today. It seems to me the more important point is that there are some transactions conducted by receivers by way of equitable execution that are of sufficient importance so as to require the court appointing such receivers to look at the transaction in question to ensure that it is in the interests of all those concerned. If, as a result of such scrutiny and approval, a degree of immunity follows, then so be it. But I do not decide that question today.

47. I turn then to the second question before me, which relates to the manner in which the shares in the Fourth Respondent presently registered in the name of VBFA should be dealt with, and whether the order that I originally made should and (if it should) can be varied. I shall, hereon, refer to these shares in the name of VBFA as the "VBFA Shares".

48. Mr Oyston, through Mr Collings, says that no order of the court is required. VBFA is, he says, perfectly entitled to transfer the VBFA Shares without a court order. That may very well be the case. Indeed, in submissions before me, Mr Collings indicated that, in that event, his client would be taking no point against Bidder 1 were he to acquire the VBFA Shares from VBFA.

49. It is clear that <u>legal</u> title in the VBFA Shares vests in VBFA. The Fourth Respondent's share register records VBFA as the owner of these shares. Looking at the terms of the order that I made on 6 November 2017, it is hard to see, given that Mr Oyston and the other Respondents have failed to pay most of the

£31,270,000 due from them by virtue of that order, how Mr Oyston could have any equitable interest or even a mere equity in the VBFA Shares. On the face of it, the obligation to purchase the shares does not have a time limit. Looking solely at paragraph 1 of the 6 November 2017 order, that is right. However, that disregards the other provisions that I identified in my factual introduction in this ruling: it is quite clear that a timetable for payment was imposed and that the Respondents are in breach of that timetable. Hence the various enforcement processes that I have described.

50. So, it is clear that the Respondents, including in particular Mr Oyston, are in breach of various court orders requiring them to pay some £25,693,958.23 (as at 9 May 2019) to VBFA.

51. The problem is whether the manner in which paragraph 1 of the 6 November 2017 order is presently framed constitutes a problem in relation to the sale that is proposed by the Receivers. As to this:

    i) I consider that both VBFA and any purchaser of the Club (like Bidder 1) would want an assurance that Mr Oyston will not pop up with an offer to pay whatever balance is due from the Respondents at some future date and then demand the VBFA Shares in return. The point is an obvious one. As I have described in paragraph 37 above, the sale of the Club to Bidder 1 involves VBFA transferring the VBFA Shares to Bidder 1. Bidder 1 will want an assurance that he is acquiring good title to the VBFA Shares. And VBFA will want to be assured that it can give an appropriate warranty as to title to Bidder 1 and that – if it does transfer the VBFA Shares – it does not run the risk of a future breach of a court order.

    ii) Thus, the <u>potential</u> future obligation on the part of VBFA to transfer the VBFA Shares to the Respondents (assuming payment of the outstanding balances by the Respondents) threatens the sale of the Club to Bidder 1 in two respects. First, Bidder 1 may be put off from buying the Club because of a potential future problem with the VBFA Shares. Secondly, because VBFA itself may be reluctant to transfer the VBFA Shares, for exactly the same reason. As I have noted in paragraph 24 above, the acquisition of the VBFA Shares is necessary for the sale of the Club to go ahead.

    iii) For these reasons, the point obviously has to be dealt with, if it can be. I should say that I do not consider – and I certainly do not find – that Mr Oyston, were he in the future to pay the balance outstanding to VBFA, be entitled to demand the VBFA Shares from VBFA. As I have noted, Mr Oyston (and the other Respondents) are in present and continuing breach of various court orders requiring them to pay some £25,693,958.23 (as at 9 May 2019) to VBFA. It would be a curious outcome, to say the least, were Mr Oyston (or any of the other Respondents) to assert an entitlement to the VBFA Shares in such circumstances. But the point is not unarguable and – for the reasons I have given – it constitutes an obstacle to the sale of the Club to Bidder 1.

52. One way round this difficulty would be for Mr Oyston to make clear that he would take no such point in the future. In this regard, I found Mr Collings' submissions remarkably unsatisfactory. At various times before me, he suggested that there was nothing in the point – i.e., that the concerns I have articulated were illusory in that they were wrong in law – only later to resile from that proposition. At other times, he suggested – if only the court would leave well-alone, and make no order – that Bidder 1 at least could benefit from an assurance from Mr Oyston that the point would not be taken. It emerged that this point was *(i)* contingent upon the problem I have identified being unaddressed by the court and *(ii)* in any event extended only to Bidder 1 and not to VBFA. In other words, Mr Oyston was reserving his right to contend in the future that VBFA would be obliged (on payment of the outstanding balance) to deliver to Mr Oyston the VBFA Shares. As I have explained, this is (irrespective of what assurances Bidder 1 might receive) a potential deal-breaker.

53. Accordingly, the problem that I have identified has to be addressed, if it can be. With hindsight, it is clear that the VBFA Shares are singularly important to the disposal of the Club (a fact that was not really contemplated when I handed down the Judgment: I assumed that the Respondents would pay out of other assets). The VBFA Shares need to be transferred to Bidder 1, otherwise the entire transaction will not go ahead. Given Mr Oyston's breach of the various orders that I have made, it does not seem to me to be right to give an opportunity to him to disrupt the sales process, if that can properly and justly be avoided. Mr Oyston has had every opportunity to pay the judgment debt he owes. He has failed to take those opportunities. Given the risks to the sale proposed by the Receivers, it is only right, if there is jurisdiction, for me to vary paragraph 1 of the order of 6 November 2017, so as to eliminate those risks.

54. That brings me to the critical question of whether I have jurisdiction to vary the order and – if so – whether I should exercise that jurisdiction. I recognise that, even if from the point of view of VBFA and Bidder 1 the order should be varied, I must take account of Mr Oyston's interest also. The concerns I have identified in paragraphs 48-54 above simply show that the variation of paragraph 1 of the 6 November 2017 order is a matter that needs to be considered. The concerns say nothing about whether such a variation is possible nor whether – if possible – the jurisdiction should be exercise.

55. Mr Collings is quite right to say that puisne judges cannot, without more, vary orders that they have made, particularly when those orders are final orders. It is, generally speaking, for the appellate courts to consider the orders of puisne judges on an appeal.

56. The jurisdiction to vary orders arises out of CPR 3.1(7). CPR 3.1(7) provides:

> "A power of the court under these rules to make an order includes a power to vary or revoke the order."

57. This rule was considered by the Court of Appeal in *Tibbles v. SIG plc* [2012] EWCA Civ 518 at [39] (*per* Rix LJ). This paragraph provides a helpful codification of the jurisprudence in this area and states, in material part, as follows:

> "39 In my judgment, this jurisprudence permits the following conclusions to be drawn:
>
> (i) Despite occasional references to a possible distinction between jurisdiction and discretion in the operation of CPR 3.1(7), there is in all probability no line to be drawn between the two. The rule is apparently broad and unfettered, but considerations of finality, the undesirability of allowing litigants to have two bites at the cherry, and the need to avoid undermining the concept of appeal, all push towards a principled curtailment of an otherwise apparently open discretion. Whether that curtailment goes even further in the case of a final order does not arise in this appeal.
>
> (ii) The cases all warn against an attempt at an exhaustive definition of the circumstances in which a principled exercise of the discretion may arise. Subject to that, however, the jurisprudence has laid down firm guidance as to the primary circumstances in which the discretion may, as a matter of principle, be appropriately exercised, namely normally only (a) where there has been a material change of circumstances since the order was made, or (b) where the facts on which the original decision was made were (innocently or otherwise) misstated.
>
> (iii) It would be dangerous to treat the statement of these primary circumstances, originating with Patten J and approved in this court, as though it were a statute. That is not how jurisprudence operates, especially where there is a warning against the attempt at exhaustive definition.
>
> […]
>
> (vii) The cases considered above suggest that the successful invocation of the rule is rare. Exceptional is a dangerous and sometimes misleading word: however, such is the interest of justice in the finality of a court's orders that it ought normally to take something out of the ordinary to lead to variation or revocation of an order, especially in the absence of a change of circumstances in an interlocutory situation."

58. In addition to *Tibbles*, I was taken to the decision of the Court of Appeal in *Terry v. BCS Corporate Acceptances Limited* [2018] EWCA Civ 2422. In that case, at [68]*ff*, the Court of Appeal considered CPR 3.1(7) in the context of final orders, whereas *Tibbles* was more concerned with interlocutory orders. The Court of Appeal noted (at [73]) that the curtailment of an apparently open discretion went further in relation to final orders than interlocutory orders. At [75] it was stated:

> "In summary, the circumstances in which CPR 3.1(7) can be relied upon to vary or revoke an interim order are limited. Normally, it will require a material change of circumstances since the order was made, or the facts on which the original decision was made being misstated. General considerations such as these will not, however, justify varying or revoking a final order. The circumstances in which that will be done are likely to be very rare given the importance of finality. An example is provided by cases involving possession orders made when the defendant did not attend the hearing where CPR 39.3 may be relied upon by analogy – see *Hackney London Borough Council v. Findlay* [2011] EWCA Civ 8, [2011] HLR 15. Another example is the use of powers akin to CPR 3.1(7) to vary or revoke financial orders made in family proceedings in relation to which there is a duty of full and frank disclosure and the court retains jurisdiction – see, for example,

Sharland v. Sharland [2015] UKSC 60, [2016] AC 871 and *Gohil v. Gohil (No 2)* [2015] UKSC 61, [2016] AC 849."

59. Although the Court of Appeal emphasised that the variation of final orders could occur only rarely, and helpful provided examples, no test was framed as to when the CPR 3.1(7) jurisdiction could be exercised in the case of final orders. What is clear, however, is that the jurisdiction is a rare one and that the one thing that CPR 3.1(7) cannot do is constitute a power in a judge to hear an appeal from him- or herself in respect of a final order. That much is clear.

60. What is less clear is when the jurisdiction is engaged. It is clearly the case that there is a difference between interlocutory orders and final orders. Final orders are self-evidently harder to vary than interlocutory orders. It seems to me that it is the obligation of a judge, when faced with an application for an order under CPR 3.1(7), to consider most carefully the statements regarding a judge's discretion in this regard contained in both *Tibbles* and in *Terry*, and to work out whether, in those circumstances, it is appropriate to exercise the jurisdiction that undoubtedly exists.

61. In this case, VBFA relied upon various material changes of circumstance to justify the variation of paragraph 1 of the order of 6 November 2017. Clearly, this is one of the two paradigm cases where CPR 3.1(7) can be exercised, at least in the case of interlocutory orders (as *Terry* makes clear). What *Terry* does not say is whether a material change in circumstance permits the variation of a final order.

62. It is important to begin with the nature of the order that I made on 6 November 2017. In one sense, paragraph 1 of the order is a final order. It represents the outcome I considered (in the exercise of my discretion under sections 994*ff* of the Companies Act 2006) appropriate to resolve the unfair prejudice that I found to exist. Thus, paragraph 1 is consequent upon the following findings in the Judgment:

    i) That unfair prejudice had been established by VBFA;

    ii) That the appropriate way of relieving that unfair prejudice was to ensure a "clean-break" between the Respondents and the Petitioner, part of which was achieved by ordering a buy-out, by the Respondents, of VBFA, such that the VBFA Shares should be transferred to the Respondents.

    iii) That the consideration payable for the VBFA Shares by the Respondents should be £31,270,000.

    It would be entirely inappropriate to use CPR 3.1(7) to vary any of these matters. That would be to constitute myself an appellate court of myself. Indeed, to vary these matters would be to cut directly across the jurisdiction of the Court of Appeal, for the Respondents sought to appeal my order of 6 November 2017, and permission to appeal was refused (twice). In short, it is in my judgment final that unfair prejudice has been established and that the appropriate remedy is as determined by me in the Judgment as laid down in the order. These matters cannot be revisited.

63. In other respects, the 6 November 2017 order is like an interlocutory order, albeit one made after the handing-down of final judgment. There are a number of provisions in the order which have required, over time, adjustment or variation in order to effect the "clean-break" that the Judgment envisaged between the Petitioner and the Respondents. A number of points need to be made:

    i) Paragraph 1 of the order does not, of itself, effect the "clean-break" envisaged by the Judgment. The connections between VBFA, Mr Belokon and the Respondents were multiple, and all had to be unwound. Paragraph 1 is directed to one of those connections, the minority shareholding in the Fourth Respondent held by VBFA.

    ii) Even as regards the buy-out of the VBFA Shares, paragraph 1 is incomplete. It makes no provision for the time by which payment for the VBFA Shares must be made. Provision regarding payment is dealt with in paragraphs 7 and 8 of the order, and these provisions have been varied substantially by subsequent orders.

    iii) Paragraph 1 is also extremely vague as to the transfer of the VBFA Shares. The order does not, for instance, indicate when the transfer is to take place, nor indeed to which Respondent the transfer should be made. Paragraph 1 of the order could, with hindsight, have been rather more clearly drafted in terms of the detail regarding the share transfer, when it was to take place and to whom (i.e. which Respondent) the transfer would be made. The Respondents' breach of the order has rendered this perhaps academic, but one could imagine, if the Respondents each contributed to the payment they were obliged to make, that the VBFA Shares should be transferred to the Respondents proportionately to their contribution. There would, at the very least, require supplementation of the order in paragraph 1. Hindsight is a wonderful thing, but no one could have anticipated that the locus of the shares, in terms of who owned the shares presently held by VBFA, could be so critical in ensuring that the other part of paragraph 1 of the order, the payment obligation, could be met.

64. I conclude that the 6 November 2017 order is in part final and in part interlocutory. I take the view that I cannot vary or revoke those parts of the order that are final. But I do consider that I can properly use CPR 3.1(7) to vary the interlocutory aspects of the order. The question is whether there have been sufficiently material changes, since the order was made, to justify the invocation of this jurisdiction. The variation that VBFA seeks is one that removes the risk that Mr Oyston can demand – on payment of the judgment debt – delivery of the VBFA Shares so as to enable these shares to be transferred to Bidder 1 as part of the sale of the Club.

65. There are, in my judgment, a number of highly material changes since the 6 November 2017 order was made:

    i) There is the non-compliance by the Respondents with court orders, where the expectation was that these orders would be complied with. It is important to bear in mind in this regard that Mr Oyston has consistently, since Judgment was handed down., said that he can pay the judgment debt.

It is just that he needs time to pay it. His – and the other Respondents' – non-compliance resulted in the need for enforcement measures.

ii) The enforcement measures have taken an unusual course, not anticipated even when the Respondents failed to discharge their obligations. For the better part of 18 months, VBFA sought to enforce the judgment debt that it was owed by way of "conventional" means – charging orders, orders for sale, and the like. It was only when it became clear that these steps were proving to be fruitless that the exceptional course of seeking and obtaining the appointment of receivers by way of equitable execution took place.

iii) We then have the developing appreciation of how one asset, the Club, might best be sold. That brought into play the need to combine what I call the "footballing assets" into one pool, and to give the Receivers jurisdiction to sell that pool, as I made clear in my judgment appointing the Receivers. The Receivers themselves have discovered, in attempting to sell the Club, that the sale of effectively the entire shareholding in the Club is essential in order to achieve a sale. That, of course, involves VBFA transferring the VBFA Shares to any purchaser, which (to be clear) VBFA is prepared to do to enable the sale.

66. The problem, then, is that articulated in paragraphs 49 to 54 above. Paragraph 1 of the 6 November 2017 order creates a potential "blot" on VFBA's title that *(i)* might deter VBFA from selling the VBFA Shares and *(ii)* might deter Bidder 1 from buying the Club. It does seem to me that the fact that Mr Oyston's non-compliance with the order could thwart the enforcement measures that have since been taken as a direct result of that non-compliance really indicates that varying the order is both appropriate and gives rise to the material change in circumstances that must exist in order to justify revisiting the order.

67. So, it seems to me that there has, for those reasons, been a material change of circumstance. The question that then follows is whether the order should be varied or revoked in the manner described in paragraph 65 above. It is important to weigh the competing interests:

i) Plainly, it is in the interests of VBFA for the outstanding judgment debt owing to it to be reduced so far as possible. Variation of the order will assist in this aim.

ii) For the same reason, the variation is in the interests of Mr Oyston. Mr Oyston has, on many occasions, stated a desire to comply with his obligations and pay these debts down. Any step enabling Mr Oyston to meet his obligations is, therefore, in his interests.

iii) It was said, on behalf of Mr Oyston, that varying the order so as to remove his possible entitlement to demand the VBFA Shares on payment of the sums due to VBFA would be to deprive Mr Oyston of a present right that he holds. In short, paragraph 1 of the 6 November 2017 order gives Mr Oyston a contingent right to the VBFA Shares, which he should not be deprived of. I reject that argument for the following reasons:

a) It is very important, when considering this question, to make clear that there is no relationship between the VBFA Shares and the value that I have attributed to those shares. The figure of £31,270,000 in paragraph 1 of the order is not in any way, shape or form a reflection of the value of those shares.

b) The reason for this lack of correlation is explained in Section F of the Judgment. In the Judgment, I identified a series of payments which I found to be disguised dividends to the Respondents, without corresponding dividends being paid to VBFA. I used these dividends, plus the money that VBFA had ploughed into the Club, to compute the relief of £31 million-odd that I ordered.

c) I made no effort to compute the value of the VBFA Shares, and I rejected the evidence of both experts (called by VBFA and the Respondents) on this matter. The Club is, quite clearly, worth much less than the £31 million I have attributed to VBFA Shares. That is clear from the Respondents' own expert, Mr Krasner, whose approach and evidence I summarised in [431]*ff* of the Judgment. The payment of £31 million is based upon the money Mr Oyston expropriated from the Club as disguised dividends, without VBFA benefiting in the same way.

d) It would, therefore, be entirely inappropriate, in light of the Judgment, to attribute a value of £31 million to the VBFA Shares. In my judgment, varying paragraph 1 of the order, so as to facilitate VBFA selling to Bidder 1 enables Mr Oyston to receive full value for the VBFA Shares. The VBFA Shares form a part of the assets being acquired by Bidder 1.

e) Although it is not possible to attribute a value to the VBFA Shares specifically in this context, it is possible to say that Mr Oyston is receiving the full value of these shares, which value is then being used in partial discharge of the debts he owes.

f) It is not possible to attribute a value to the VBFA Shares that is separate from the value attributable to the Club as a whole. To say that the VBFA Shares are worth one fifth of the consideration to be paid by Bidder 1 would be wrong: the VBFA Shares constitute a minority holding and ought to be discounted for that reason. On the other hand, unless the VBFA Shares are transferred, the sale of the Club will not go ahead – so there is a "ransom" value. The fact is that these questions of value do not need to be resolved. Mr. Oyston is receiving full value because his judgment debt will be reduced by the amount received for the sale of the Club including any value attributed to the 20% shareholding, whatever that amount may be.

g) So, the fact is that both VBFA and Mr Oyston benefit from the variation in the order. VBFA benefits in that the transaction goes ahead. Mr Oyston benefits in receiving a consideration for a

minority shareholding that he is only getting because someone wants to acquire all the shares in the Club.

68. One can test the slightness of the variation I am minded to make in the following way. Suppose my original order had provided for the immediate transfer to Mr Oyston of VBFA Shares, with payment to follow. After the failure by Mr Oyston (and the other Respondents) to pay the judgment debt, the same enforcement processes would have ensued, and the VBFA Shares would have been made subject to the enforcement regime that I have described. They would have become part of the estate that the Receivers could deal with in the course of their duties. In other words, the VBFA Shares could have been sold in precisely the manner that is now being envisaged, save that VBFA would not be involved in the sale. What my intended variation to the order seeks to replicate is this thinking; there is no prejudice to Mr Oyston in treating him as if he had already received the VBFA Shares on 6 November 2017. It is as if the VBFA Shares had already been transferred to the Respondents and are now being used to pay down a debt. That is a cumbersome way of seeing the transaction and, to be clear, I am not going to be varying the order to introduce these complexities. But it does, I hope, make clear my thinking that, by facilitating the direct sale by VBFA to Bidder 1 of the VBFA Shares, all I am doing is cutting out additional transactions which would otherwise involve transferring the VBFA Shares to the Second Respondent and then causing those shares to be subject to the Receivers' regime. Whilst I am satisfied that I could vary the order in this way, it is cumbersome and time-consuming. It would also require a substantial re-writing of the contracts between the Receivers, Bidder 1 and VBFA which contracts are – as I have described – in advanced draft form.

69. So I am going to vary the order of the 6 November 2017 so that the sale of the VBFA Shares by VBFA to Bidder 1, and payment by Bidder 1 of the consideration for the Club to the Receivers, VBFA itself receiving no payment for the VBFA Shares, shall be deemed to constitute the purchase of the VBFA Shares by the Respondents, and also the sale by the Respondents of the VBFA Shares to Bidder 1. That, therefore, concludes the second question.

70. I move on to the third and final question, namely, whether I should approve the sale of the Club. It would appear that Mr Oyston has no issue with the sale. He has certainly not raised such an issue. In his statement before me, at paragraph 8, he seeks to reserve his rights to make further points. That, I consider, is inappropriate. Mr Oyston has had every opportunity to take points in relation to the proposed sale. The timetable leading up to this hearing was structured expressly with Mr Oyston's interest in mind. It is, in my judgment, inappropriate for Mr Oyston to say, as he does in paragraph 8, "I have not commented on the evidence as to marketing value as to which my rights are reserved". It seems to me, however, that it is significant that at this hearing Mr Oyston has raised no substantive point against the transaction that the Receivers propose.

71. Applying the criteria laid down in *Re Nortel*, I must ask myself whether the exercise of the power by the Receivers that they propose to exercise is a lawful one, within the scope of the powers conferred on them by my order. Clearly, it is. The order is drafted expressly to entitle them to get in and sell the assets that they are proposing to sell, having got them in.

72. Have the Receivers acted as ordinary, prudent and reasonable receivers? Am I satisfied, without seeking to second-guess the Receivers, that the sale of the Club to Bidder 1 that they advocate is a proper transaction in all the circumstances? And do the receivers genuinely hold the view that the transaction is a proper one which should be entered into? I shall answer these questions, which all arise out of the *Re Nortel* case, in compendious form rather than taking them one at a time.

73. It seems to me that the transaction is one that I should approve. The price that has been obtained in agreement with Bidder 1 has been achieved after a competitive process. I am satisfied that the price is a reasonable one and I am satisfied that Bidder 1 is, not simply on grounds of price but on the other grounds I have referenced, clearly the best bid. Even if there were not the question of the urgency of the sale, there is, in my judgment, no proper point in waiting and seeing whether something better can be achieved. The fact is that the Petitioner has been kept out of its money for quite long enough and there is, for that reason alone, a degree of urgency in effecting the sale. But, over and above that, there is the overriding urgency that unless the sale takes place and a further injection of cash by Bidder 1 occurs, the Fourth Respondent will be facing solvency difficulties. So, waiting and seeing will not just achieve nothing; it will positively hinder the future of the Club.

74. Accordingly, I conclude that the sale ought to go ahead with all due expedition, and that the sale proposed to Bidder 1 is one that is a proper one that should be sanctioned by this court, and I do so.

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