

Neutral Citation Number: [2020] EWHC 2655 (Ch).

Case No: CR-2020-BHM-358

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
Insolvency and Companies List (ChD)

Birmingham Civil Justice Centre
Bull Street, Birmingham B4 6DS

Date: 7 October 2020

Before :

HHJ DAVID COOKE

In the Matter of Peter Thomas Cartwright (a bankrupt)
And in the matter of the Insolvency Act 1986
Between :

Richard Paul Rendle
(Trustee in Bankruptcy of Peter Thomas Cartwright)

Applicant

- and -

Panelform Ltd (1)
Panelcraft Access Panels (a firm) (2)
Peggy Cartwright (3)
Lisa Cartwright (4)
Julie Cartwright (5)

Respondents

Robert Mundy (instructed by The Wilkes Partnership) for the Applicant
Mr Peter Cartwright in person, representing the Third to Fifth Respondents

Hearing date: 21 August 2020

HHJ David Cooke:

1. At an expedited trial on 21 August 2020 I made orders on the application of Mr Rendle as trustee in bankruptcy of Mr Peter Cartwright,
 - i) declaring that various transactions by which the business and assets of a business carried on under the name Panelcraft Access Panels and conducted either by Mr Cartwright as a sole trader or by a partnership were transferred to a limited company Panelform Ltd constituted transactions at an undervalue entered into for the purposes of putting those assets beyond the reach of creditors of Mr Cartwright, within the meaning of s 423 Insolvency Act 1986, and
 - ii) for the purpose of restoring the position to what it would have been if the transactions had not taken place.

I said at the conclusion of the hearing that I would state my reasons later in writing. These are those reasons.

2. Mr Cartwright was made bankrupt by order of Insolvency and Companies Court Judge Prentis on 7 May 2020, after a contested hearing of a petition by Her Majesty's Revenue and Customs based on a claim for taxes of some £487,000, including VAT of approximately £265,000. Mr Rendle was appointed his trustee in bankruptcy on 27 May, and made the present application, in that capacity, on 20 July 2020.
3. Mr Rendle gave evidence himself, relying in part on information provided by his employees and agents who attended the business premises and investigated its affairs, and on a report by Mr Richard Mascall as to the value of certain plant and machinery. He was represented by Mr Mundy.
4. Mr Cartwright appeared, representing his wife, the third respondent, and his daughters, the fourth and fifth respondents. The first respondent is a company whose shares are owned by Mr Cartwright's daughters, who are also its only directors. Although he is not an officer or employee of the company Mr Cartwright effectively represented its position before me, on the basis he was authorised to do so by his daughters. Mr Cartwright gave evidence himself and was assisted by Mr McDonough, and employee of the business.
5. The factual background to the business and its affairs is not entirely clear, largely I am satisfied because of deliberate obscurity by Mr Cartwright. As the trading name suggests, it manufactures panels to be fitted in buildings to give access to spaces such as lofts or voids behind walls. Some of these panels at least are made by pressings from sheet metal that require large machines. Initially on his appointment as trustee Mr Rendle had assumed that the business was carried on by Mr Cartwright as a sole trader. Many documents, such as statements on the business's two bank accounts at RBS and CoOp Bank, referred to it as "Mr P Cartwright trading as Panelcraft". However, on contacting the business's accountant he was told that it was operated by a partnership, the partners being Mr Cartwright, his wife and their two daughters, and was provided with accounts prepared on that basis.
6. However Mr Cartwright when contacted told Mr Rendle that his wife and daughters had resigned as partners, and he subsequently produced letters of resignation from each of them dated 31 March 2020. In light of the uncertainty as to the continued

existence of the partnership and ownership of the business, Mr Rendle petitioned for it to be wound up. On 30 June 2020 I made an order appointing Mr Rendle as Provisional Liquidator of the partnership pending hearing of the winding up petition, and on 18 August I made the order for the partnership to be wound up and appointing Mr Rendle as its liquidator.

7. Mr Rendle has spoken to Mr Cartwright on a number of occasions, and sent an agent, Mr Bentley, to the business premises on the day of his appointment (27 May 2020) and subsequently. Mr Bentley was instructed on his first visit to tell all the employees of the bankruptcy and to make them redundant. He was however effectively prevented from doing so by Mr Cartwright, who gave varying accounts of what was going on.
 - i) He first said that the business was shutting down and all the employees "would be" made redundant.
 - ii) When Mr Bentley said he had to make them all redundant that day, Mr Cartwright told him that the assets had been sold the week before, and that the persons working were not employees but subcontractors who rented space from him..
 - iii) He later said that all the employees had already been made redundant by him and sent home.

Any suggestion that the business had ceased to operate was not consistent with what Mr Bentley was told by occupiers of other units, who told him they had never seen it so busy.

8. On 1 June Mr Cartwright told Mr Rendle that the business had ceased to trade and he had sold its assets to the first respondent Panelform Ltd, which was his daughters' company. Because of the similarity between the names, I will refer to it as "the Company" to distinguish it from the unincorporated business.
9. Mr Bentley went to the premises again on 2 June and found the business fully operational. Mr Cartwright then gave him a document that purported to be an agreement dated 30 April 2020 by which Mr Cartwright, signing as "Owner, Panelcraft" agreed
 - i) To sell four machines and a forklift truck to the Company for £55,250, and
 - ii) To assign to the Company the lease contracts relating to two other machines, with no consideration stated.
10. Mr Rendle's investigations have established that Mr Cartwright and his daughters have put in place a series of arrangements that, Mr Rendle says, constitute a scheme to transfer the business and the benefit of its trade and assets to the Company:
 - i) In a letter dated 5 May 2020, two days before the bankruptcy hearing, Mr Cartwright wrote to Access Building Products, the major customer of the business (bundle p 260) telling them that "I am to cease trading and therefore am unable to fulfil any orders after 11th May 2020". He asked Access to cancel any orders that may be outstanding for after that date and to "consider placing orders with Panelform Ltd established at the above address for the past seven years and who have purchased/leased the assets". Access did as they were

asked and informed Mr Rendle in a response to a questionnaire circulated by him (p 258) that they considered payment for all orders fulfilled after 5 May (not 11 May) to be due to the Company and not the unincorporated business.

- ii) It is strange that a letter sent on 5 May (a Tuesday) and presumably in anticipation of the bankruptcy hearing on Thursday 7 May should refer to a cessation of trading "after" Monday 11 May. This letter is said to have been sent by email, but the email itself is not in the bundle. Access said they had received it on 5 May, and Mr Cartwright was not challenged about that date. He was however asked whether Panelform Ltd had been trading the business already by 5 May, to which he gave a very hesitant answer: "er... partly, yes".
- iii) Mr Cartwright provided at the hearing however a letter dated 11 May sent by his solicitor acting in the bankruptcy petition, confirming the outcome of the hearing. In that letter the solicitor advised that "your personal bank accounts should be frozen at the date of the order which is obviously going to have a highly detrimental effect on the running of your business. As the business is a partnership then... the partnership is automatically dissolved upon bankruptcy... This means you will have to keep the business going as a sole trader or set up a new limited company (but with someone else acting as director initially)... a trustee in bankruptcy is likely to be appointed... the trustee will ordinarily realise your assets and sell the same in order to pay off the tax debts and any other debts you may have...".
- iv) Whether or not as a result of the solicitor's advice it seems probable that similar communications were immediately sent to all or most other customers. One, BJ Mammone & Partners told Mr Rendle (p 262) that they had been asked by letter from Lisa and Julie Cartwright on 11 May to make future payments to the bank account of the Company and not the unincorporated business. That letter (p 264) told the customer that Lisa and Julie "have reformed the business as Panelform Ltd, trading as Panelcraft Access Panels" and asked that all orders be sent to the Company's email address and that payments (without distinguishing between sums due for past or future orders or deliveries) be sent to the bank account of the Company. Copies have been obtained of similar letters of the same date sent to B&K (Southern) Fire Protection Ltd (p 254) and London Drywall Ltd (p360) and of an email from Interduct UK Ltd (p 355) asking Lisa Cartwright to confirm that what was evidently a similar letter sent to them, also dated 11 May, was authentic and not a payment scam.
- v) Mr Rendle submits that the agreement to sell five machines and transfer leases of others was not entered into on the date it bears (30 April) but on or about 27 May, so after the bankruptcy, and backdated. I deal with this further below.
- vi) It was on 27 May that Mr Rendle was appointed Trustee of Mr Cartwright's estate.
- vii) On 28 May 2020 Mr Cartwright, again signing as "Owner" and on behalf of "Panelcraft Access Panels (Mr Peter Cartwright t/as)...('the Hirer')" entered into a novation agreement (p 446) by which the rights and obligations of the Hirer in relation to a Hire Purchase Agreement (No 2817, p 457) relating to a machine described as HFE 1160 were novated to the Company with the consent of the machine's owner, an asset finance company called Amada. It is

not clear whether a similar novation was entered into in relation to another machine that was subject to HP, a Vipros VP358K (agreement No 2623, p 452).

- viii) The business premises were leased by North Warwickshire Council to Mr Cartwright personally. The lease therefore constituted an asset of his bankruptcy estate. On the same date, 28 May, Mr Cartwright made an urgent request to the council to surrender the lease and have a new lease granted to the Company. It appears from email responses sent by the council to Mr Rendle (p 97) that Mr Cartwright told the council the matter was urgent because his business was in trouble and insolvent so that he could not pay the rent (though he did not disclose that he was bankrupt) but said that the Company could take over immediately, and the council appears to have agreed this request without further enquiry. Mr Cartwright said in evidence that he had gone to the council offices the same day and met someone to sign the documents outside in a garden because of Covid restrictions. No copies of the surrender or new lease have been provided, but it is not suggested that any consideration was provided by the Company, other than assuming liability under the new lease.
- ix) On 1 June Mr Cartwright told Mr Rendle that the business had been sold on or about 4 May, but he could not remember the exact date.
- x) On the next day 2 June 2020 Mr Bentley was given a copy of the machinery sale agreement dated 30 April when he visited the site. An employee told Mr Rendle (witness statement at p 19 para 12, evidence that was not challenged) that employees had not previously been told of Mr Cartwright's bankruptcy but on 2 June were informed that the business was to be transferred to Panelform Ltd, which would be run by Lisa and Julie Cartwright as Mr Cartwright was "taking a step back". The employees were treated as employees of the unincorporated business in its payroll records until at least 31 May 2020.
- xi) Mr Cartwright accepted in cross examination that the Company has carried on the trade using the trading name of and fulfilling orders that were originally placed with the unincorporated business, manufacturing in accordance with designs that had been produced by and so were owned by that business and using fire safety approval certificates issued to that business, and using stocks of raw materials and partly finished goods and other tools equipment and assets at the premises that had been owned by that business, none of which had been formally transferred to the Company. No payment or other consideration had been given for such transfer or use.
- xii) Mr Cartwright also accepted that the Company had collected monies payable in respect of products delivered both before and after the date of his bankruptcy. He asserted that at least £20,000 had been paid from such collections into the pre-bankruptcy bank accounts now under the control of Mr Rendle, though Mr Rendle said that as far as he was aware there had been no receipts into those accounts since his appointment. Mr Cartwright said however that other monies had been used to pay creditors and suppliers of the unincorporated business, excluding HMRC, such that, according to him, there was little now outstanding due to such creditors. He was clear that he did not believe, and did not intend, that anything should be paid to HMRC until the

claims he considers he has against it, which I refer to below, have been accepted and agreed to be deducted from any taxes owed.

The machinery sale agreement

11. The machinery sale agreement (p 70) is a one page document on letter heading of the Company. The principal operative provisions are:

“I agree to the purchase of the listed items to (sic) Panelform Ltd with an agreed payment plan of six months.

1 no. 2009 HFT 1003 Brake Press	£19,000
1 no 2006 HFT 5012 Brake Press	£14,000
1 no. 2004 Vipros 358 King	£18,000
1 no. Amada Togu 3CE	£4,000
1 no. used Toyota Forklift	£250
Total	£55,250

The remaining 2004 Vipros 358 King and the two metre brake press leased will be assigned to Panelform Ltd”

12. One amount of £4,000 was paid by the Company to the unincorporated business account, by cheque dated 30 May 2020 (p71). In cross examination Mr Cartwright said this was an instalment of the purchase price of the machines, though it is obviously not one-sixth of that price. He said that the six month payment period had been "negotiated" and he had thought it would be "unreasonable" to demand immediate payment in full. It is not disputed that the two items referred to as "leased" are the machines the subject of the HP agreements assigned to the Company on 28 May.
13. On 27 May 2020 at 3.52 pm Mr Mark Groom of Amada sent an email to Lisa Cartwright (p 336) saying:

“Further to my earlier conversation with Peter, please see below realistic 'market' trade in values for [your] current Amada equipment.

2009 HFT 1003- £19,000 + VAT

2006 HFT 5012- £14,000+ VAT

2004 Vipros King- £18,000+ VAT

2004 Vipros King - £18,000 + VAT

Amada Togu 3CE- £4,000 + VAT.

Regarding the machinery under Amada Finance. The Vipros King currently has 4 payments outstanding, therefore would expect this to be cleared. The 2017 2m Pressbrake agreement can be [novated] over to the new company.

Please complete and return the attached form for us to set up the new agreement.”

14. Mr Cartwright accepted that one of the two Vipros King machines listed and valued at £18,000 was the one referred to as under finance with four payments outstanding. That was the subject of HP agreement no. 2623 (p 452) which shows that the four payments remaining were of £1820 each, and that there was then an option to buy the machine outright on payment of a further £50, £7,330 in all. Mr Cartwright accepts that the Company has this machine in its possession and the only realistic inference is that it either has obtained the benefit of this agreement (by paying off the remaining instalments as Mr Groom required) or expects to do so by virtue of a novation arrangement similar to the document provided for the 2m Pressbrake machine. Even on the basis of Mr Groom's valuation (which is too low according to Mr Rendle's expert evidence) the total paid or payable is over £10,000 less than the value of the machine.
15. Mr Mundy put it to Mr Cartwright that the machinery sale agreement had not been entered into on 30 April but had been prepared from this email, pointing out that the other four machines referred to in the email were listed in the same order with very similar descriptions in the sale agreement and with the same values that Mr Groom had advised, apparently four weeks after the date of the sale agreement.
16. Mr Cartwright denied this in cross examination, saying that he had telephoned Mr Groom in April and been given the values at the date of the sale agreement, which he had used to draw that up on the date it bore. Mr Groom had however forgotten to put the valuations in writing until chased by him on 27 May, when he had apologised and sent his email to confirm what he had said previously.
17. I regret to say I did not believe this was a true explanation. Mr Mundy pointed out that Mr Cartwright had filed a witness statement immediately before the hearing in which he has sought to explain the delay in providing a written valuation as in some way "due to Covid 19 lockdown restrictions". It would not be credible that if Mr Groom had been asked for valuations at the end of April any Covid restrictions he was working under would have been such as to allow him to give an oral valuation but made him unable to confirm that by email. If that had been the explanation Mr Groom had given, there would be no reason for Mr Cartwright to give a different explanation in cross examination, ie that Mr Groom had simply forgotten (and not been chased for four weeks). Further, Mr Groom's email refers to an "earlier conversation" with Mr Cartwright, to which he is plainly responding. The tenor of the email is much more suggestive of a conversation earlier that day than four weeks previously. There is no reference in this email to it confirming values previously given, or to any apology for a delay of four weeks in doing so.
18. Further, Mr Cartwright accepted that he had not told either the court at the hearing on 7 May nor the solicitor acting for him in the bankruptcy proceedings of any sale of assets a week beforehand.

19. It is much more likely, and I find, that Mr Groom was asked for these values in a call made by Mr Cartwright on 27 May, presumably prompted by Mr Bentley's visit to the premises that day, as a result of which Mr Cartwright would have realised that Mr Rendle had been appointed trustee and was seeking to take control of the business. At that point Mr Cartwright seems to have decided to take urgent action to put in place arrangements that would prevent Mr Rendle doing so and complete the effective transfer of the business to the Company that he had started by (at latest) 11 May. That action consisted of rapidly documenting a sale and transfer of the principal machinery to the Company and his request as a matter of great urgency to the council effectively to transfer the lease. These arrangements were put in place by the next day, 28 May. The machinery sale agreement was, I find, drawn up and executed on or about 27 or 28 May and was then shown to Mr Bentley on his next visit to the premises on 2 June. It is possible of course that Mr Cartwright and his daughters may have discussed a sale of the machines before that date (as customers were told on 11 May) but if so the price cannot have been agreed until 27 May at the earliest.

Relevant law

20. S 423 Insolvency Act 1986 and the following sections provide as follows:

“423 Transactions defrauding creditors.

- (1) This section relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if—
- (a) he makes a gift to the other person or he otherwise enters into a transaction with the other on terms that provide for him to receive no consideration...or
 - (c) he enters into a transaction with the other for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by himself.
- (2) Where a person has entered into such a transaction, the court may, if satisfied under the next subsection, make such order as it thinks fit for—
- (a) restoring the position to what it would have been if the transaction had not been entered into, and
 - (b) protecting the interests of persons who are victims of the transaction.
- (3) In the case of a person entering into such a transaction, an order shall only be made if the court is satisfied that it was entered into by him for the purpose—
- (a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him, or
 - (b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make.

- (3) In this section “the court” means the High Court ...
- (4) In relation to a transaction at an undervalue, references here and below to a victim of the transaction are to a person who is, or is capable of being, prejudiced by it; and in the following two sections the person entering into the transaction is referred to as “the debtor”.

424 Those who may apply for an order under s. 423.

- (1) An application for an order under section 423 shall not be made in relation to a transaction except—
 - (a) in a case where the debtor has been made bankrupt ... by the official receiver, by the trustee of the bankrupt’s estate ... or (with the leave of the court) by a victim of the transaction... or
 - (c) in any other case, by a victim of the transaction.
- (2) An application made under any of the paragraphs of subsection (1) is to be treated as made on behalf of every victim of the transaction.

425 Provision which may be made by order under s. 423.

- (1) Without prejudice to the generality of section 423, an order made under that section with respect to a transaction may (subject as follows)—
 - (a) require any property transferred as part of the transaction to be vested in any person, either absolutely or for the benefit of all the persons on whose behalf the application for the order is treated as made;
 - (b) require any property to be so vested if it represents, in any person’s hands, the application either of the proceeds of sale of property so transferred or of the money so transferred;
 - (c) release or discharge (in whole or in part) any security given by the debtor;
 - (d) require any person to pay to any other person in respect of benefits received from the debtor such sums as the court may direct...
- (2) An order under section 423 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the debtor entered into the transaction; but such an order—
 - (a) shall not prejudice any interest in property which was acquired from a person other than the debtor and was

acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest, and

(b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.

(3) For the purposes of this section the relevant circumstances in relation to a transaction are the circumstances by virtue of which an order under section 423 may be made in respect of the transaction..."

21. The court must therefore be satisfied in order to establish jurisdiction that a person has entered into one or more "transactions" and that they were "at an undervalue" within the meaning of the section. Unusually, in the circumstances of this case, the question first arises who it is that has entered into any putative transactions. A partnership is of course an unincorporated entity with no separate legal personality from that of the partners who make it up. It is however treated for purposes of practical administration of insolvency jurisdiction in some respects as if it were a separate entity, so that creditors and assets of the partnership are initially treated separately from other creditors and assets of the individual partners and assets of the partnership are treated as being one estate to be realised and divided first among the creditors of the partnership. If there is a surplus of assets in that estate, the surplus is made available to other creditors of the partners, and if there is a deficit the partnership creditors are entitled to prove against any surplus assets in the estates of the individual partners.
22. Mr Mundy did not invite me to find that the resignations as partners of Peggy, Lisa and Julia Cartwright were not genuine or not effective on the date they bore. I proceed therefore on the basis that there was a partnership and that the business and its assets were assets of that partnership, jointly owned by all the partners, at least until 31 March 2020. Mr Cartwright has not provided any evidence of what happened after that date, though he has referred to himself in documents as being the "owner" of the Panelcraft business from then on. Insofar as he dealt with the assets and affairs of what had been the partnership business after that date, in principle he might have done so as a member of the partnership for the purpose of winding up its affairs. In practice he seems to have regarded the end of the partnership as immediately vesting the business and assets in his own sole ownership. That might be so if that is what the resigning partners had agreed, but there is nothing in the resignation letters and no other evidence to show that they did.
23. I proceed then on the basis I should be satisfied as to jurisdiction and the matters to be established, whether any "transaction" is to be regarded as being entered into by the partnership, insofar as it may be considered to have continued to exist for the purpose of winding up its affairs, or by Mr Cartwright as sole owner, the partnership assets having been by agreement of the partners transferred to him solely. In terms of the statute, that is, whether the "debtor" is considered to be Mr Cartwright personally or the partnership.

Was there a relevant transaction?

24. "Transaction" is defined in s 436 Insolvency Act 1986 as including "a gift, agreement or arrangement". I am in no doubt that all of the steps described above, whatever their precise nature or exact legal effect, by which the business and assets of the unincorporated entity were transferred to or made available for use by the Company constituted an arrangement made between Mr Cartwright and (at least) his daughters, and so with the Company of which they were the directors, and so may be considered in a global sense to be a transaction within the meaning of the section. In any event, individual components of that overall arrangement themselves constituted arrangements or agreements within the definition, and so could be separately considered to be transactions. These include, but are not limited to:
- i) The sale of machinery described in the agreement dated 30 April 2020, whether or not it was executed on that date,
 - ii) The novation of the HP agreement relating to the 2m Pressbrake machine,
 - iii) The arrangements by which the Company acquired or obtained the use of the other HP machine, whether by novation of the HP agreement or otherwise'
 - iv) The arrangements by which the Company was enabled to make use of other assets of the unincorporated business, including its trading name, stock, other tools and equipment, designs, fire certificates and goodwill, whatever the terms of those arrangements and whether or not they were effective to vest title to any such assets in the Company,
 - v) The arrangements, whatever their nature, by which the Company has collected debts due to the unincorporated business and retained or made use of the proceeds, and
 - vi) The arrangements made by Mr Cartwright and the Company for the lease of the premises to be surrendered in exchange for a new lease to the Company.

The Claimant's standing

25. The next question is whether Mr Rendle, acting as he is in these proceedings as trustee in bankruptcy of Mr Cartwright (and not for instance in the capacity he also holds of liquidator of the partnership) is entitled to seek an order under s 423. That involves a consideration of whether when Mr Cartwright entered into these transactions he did so in his own capacity or on behalf of the partnership.
26. However, ultimately it is not necessary to determine that question, because I am satisfied that, whatever the answer, Mr Rendle has the necessary standing. This is because:
- i) If and to the extent that Mr Cartwright was acting in his personal capacity (so that "the debtor" for the purposes of the section is Mr Cartwright personally) Mr Rendle as his trustee has standing under s 424(1)(a), and
 - ii) If and to the extent that Mr Cartwright was acting on behalf of the partnership with the result that the partnership as distinct from Mr Cartwright personally should be considered to be "the debtor", Mr Rendle as trustee of his personal estate may be considered a "victim" of the transactions, in that they affect or

potentially affect either the ability of the separate creditors to participate in surplus assets of the partnership estate, or if the partnership estate is insolvent, the extent to which its unsatisfied creditors may make claims to participate in distribution of the separate estate.

Was any transaction one at an undervalue?

27. Next is the question whether the transactions were "at an undervalue". Taking first the assets other than the lease, the only identifiable consideration to the debtor in any of these arrangements is the price payable for the machinery sold, and, to the extent one or both HP agreements were novated, the assumption of liabilities under that novation. Mr Rendle's case is that that consideration was significantly less than the value of those machines even before account is taken of the value of other assets.
28. Mr Rendle relies on a written report by Mr Richard Mascall, a specialist in the valuation and disposal of plant machinery and business assets, dated 6 August 2020 (p 413). Mr Mascall visited the premises on 2 June 2020 and inspected the machines and other assets available to see.
29. Mr Mascall's opinion was that the four machines and forklift truck apparently sold to the Company each had an "in situ" value greater than the price stated in the sale agreement, the total value being £132,000 rather than the stated price payable of £55,200. The "in situ" valuation is what he estimates could be realised on a sale to a buyer taking over the business and premises, as distinct from "ex situ" sale on a break up requiring removal at the buyer's expense. The in situ basis is obviously nearest to the transaction actually entered into with the Company.
30. In relation to the two HP machines, Mr Mascall estimated that they had "equity" values of £44,490 and £13,125 respectively, the equity value being the in situ value on a sale by the owner, less the payments required to discharge the HP agreements and acquire title.
31. Mr Cartwright disputed these valuations. He pointed to the email from Mr Groom, who he said had a much better position to comment on valuation than Mr Mascall. However, as Mr Mundy points out, that email is not expert evidence, being neither supported by an appropriate expert's declaration acknowledging his obligations to the court nor otherwise in a form complying with the requirements of an expert's report. He has not been called to give evidence and so has not been available to be cross examined. Thus, for instance, I have no indication what request or instruction was given to Mr Groom that resulted in his email.
32. Further, Mr Groom had sent a previous email on 18 October 2019 (p 467) in which he gave values for the six machines (excluding the forklift) totalling £246,000, which he described as "the prices Amada would sell your current equipment for". Mr Cartwright relied on this in opposing the bankruptcy petition as indicating the value of his assets. No mention was made of outstanding HP liabilities. The two emails clearly state different bases for the figures given, but this in my view simply shows that Mr Groom was prepared to provide figures on request by Mr Cartwright that were higher or lower according to the position Mr Cartwright wished to show for the time being. I am quite unable to conclude that Mr Groom's email casts any doubt on the reliability of Mr Mascall's evidence.

33. Mr Cartwright asserted himself that Mr Mascall's figures could not be relied on as the machines were in poor condition and needed various repairs and improvements at considerable cost. But he had no supporting evidence of the need for such expenditure, or that any of the matters he mentioned would be outside the range of normal running repair and maintenance costs that any buyer in a purchase of the nature Mr Mascall was considering would have to anticipate and allow for in his offer. I reject these submissions also, and accept Mr Mascall's evidence as to value of the machines.
34. It follows that I am satisfied that the arrangements referred to above were, whether considered in the aggregate or separately, a transaction of transactions at an undervalue within the meaning of the section. If considered as one overall transaction (which in my judgment they should be) the only identifiable consideration received by the debtor is the promise to pay £55,200, plus the commitment in the novation agreement to discharge payments on one HP machine. Mr Mundy submitted that the obligation to pay £55,200 was in any event worth less than that from the debtor's perspective because it was deferred and of doubtful value since, on one version at least of its financial records, the Company was heavily insolvent. But for present purposes I do not need to take that in to account; on any basis the consideration received was worth significantly less than the value of the machines it related to, and less by a much greater margin than the value of all the assets transferred, which included stocks, tools and other equipment, debtors intellectual property and goodwill.
35. Even if the arrangements were considered as a number of separate transactions, each of them in my judgment would also be a transaction at an undervalue:
- i) The sale of the four machines and forklift truck was, even at the stated price, for a consideration significantly less than their value to a purchaser taking over the business as the Company did.
 - ii) The formal novation of one machine provided for some consideration to the debtor, in the form of covenants by the Company in the novation agreement to discharge the remaining obligations under the HP agreement, but those payments amounted to £24,675 in all and that machine had an equity value over and above that of £13,125, so its value exceeded the consideration received by over 50%.
 - iii) There was no formal novation of the other machine and so no covenant to the debtor to discharge outstanding obligations, but even if it is assumed that some equivalent promise was made, the payments outstanding totalled £5,510 but the value of the machine was £50,000, nine times greater than any assumed consideration to the debtor.
 - iv) There was no other identifiable consideration received by the debtor, so that any arrangement by which other assets were transferred, or under which the Company was given the use of them without transfer of ownership, constituted a transaction for no consideration. I do not consider that any commitments undertaken by the Company to the council under the new lease granted to it constituted consideration received by the debtor (as distinct from the Council) or that any release of the debtor's obligations to the Council on surrender of the original lease amounted to consideration provided by the Company.

The statutory purpose

36. I am fully satisfied that Mr Cartwright's motive in entering into these arrangements was to put the assets of the business beyond the reach of its creditors, or to prejudice their interests by making it difficult or impossible for those creditors to recover the assets or their value.
37. Firstly it is obvious, in my judgment, that the principal purpose of all these arrangements, instituted (at the earliest) very shortly before the final hearing at which Mr Cartwright knew he was very likely to be made bankrupt, and rushed to a conclusion (at the latest) notwithstanding the bankruptcy order and as soon as Mr Cartwright knew that a trustee had been appointed and would be seeking to take charge of those assets was to keep the assets out of the hands of that trustee. Mr Cartwright maintained that he had been "ordered by the court" or advised by his solicitor to realise his assets for the best price, but he could produce no order or record of advice to anything like that effect, and in any event he manifestly did not set out to achieve, nor did he achieve, a realisation that would make the maximum value available to creditors. I am in no doubt that Mr Cartwright's intention was that these arrangements would either completely frustrate the trustee in doing his duty to collect and realise the assets, or make it too difficult, expensive or risky for him in practice to press on with doing so.
38. This plainly has the effect of putting the assets beyond the reach of creditors acting through the collective insolvency process, or prejudicing their interests in doing so by reason of making realisation in that process more difficult, expensive or uncertain.
39. Mr Cartwright maintained that the arrangements had in fact enabled him to discharge all or almost all of the creditors of the business, because the Company had paid their debts from monies received by it from collecting sums originally due to the unincorporated business. Thus, he submitted creditors had not been prejudiced. That is not however an answer, for a number of reasons:
- i) Mr Cartwright has provided no evidence of which creditors he has caused to be paid, or how much. I have no evidence therefore from which I could conclude that any creditor that has been paid has in fact had their full debt discharged.
 - ii) In particular, Mr Cartwright was very open in saying that he had not paid, and did not intend to pay, anything to Her Majesty's Revenue and Customs until he was satisfied that his demands of it had been accepted and offset. Mr Cartwright has a very long running grudge against HMRC in which he continues to dispute significant amounts of the tax liabilities claimed from him, notwithstanding judgments against him, and maintains that he is entitled to a minimum of £100,000 compensation for what he regards as the wrongful behaviour of HMRC as an institution, a range of its employees and previous insolvency practitioners. At the very minimum, therefore, this amounts to an intention to prefer some creditors over the claims of HMRC and, even if I accepted his assurances that he intended to pay the taxes due after his counterclaims had been offset, an intention to arrogate to himself the ability to negotiate and determine both the amount of the claims against him and the merits and value of the claims he asserts, and so the amount, if any, to be paid to HMRC from the realisation of his separate assets or those of the partnership. These are, of course, now the proper functions of the trustee in bankruptcy

and/or the liquidator of the partnership. On his own evidence, therefore, Mr Cartwright's intention is to put assets beyond the reach of HMRC as a creditor, or prejudice its interests as a creditor by requiring it (at best) to depend upon his discretion for receiving any realisation rather than its rights in the insolvencies.

iii) Further, Mr Cartwright has not even articulated any intention to pay other liabilities in the insolvencies, such as the costs of the claimant in his various roles and the court proceedings. I am in no doubt he has no intention of making, or procuring the Company to make, any money available for that purpose.

40. Insofar therefore as it was suggested that the arrangements did not meet the statutory purpose because they constituted a different way of making the assets of the business available to its creditors, I reject that. I find that the statutory purpose is established.

Remedy

41. The court has a wide discretionary power to make orders for the purpose of restoring the position to what it would have been if the transactions in question had not been entered into, or protecting the interests of victims of the transaction, which includes creditors in the insolvencies. On that counterfactual assumption, the claimant, in his capacities as trustee of Mr Cartwright's separate estate and/or liquidator of the partnership, would have had control over all the assets of the unincorporated business from the date of his appointment, including the premises and the right to recover sums due in relation to all sales and supplies prior to that date. Insofar as production has continued and supplies have been made thereafter in the name of the Company, the court may make an order for any benefit derived by the Company to be paid to the trustee/liquidator (see s 425 (1)(d)). It will be necessary to obtain a full account of any such transactions in order to determine what that benefit amounts to and what order should be made in respect of it.

42. I have no doubt that the only realistic prospect of establishing what has gone on is to put the trustee in a position to have control over all the assets and records of any such transactions, and responsibility to collect any debts receivable, whether for supplies made under the aegis of the Company or the unincorporated business. The process of disentangling these transactions, determining what belongs to the insolvent estates and the Company respectively, and to the extent for instance that any receivables belong in law to the Company, the extent to which a benefit has been derived that ought to be paid to the estates, will be difficult enough even if the trustee has that control. It will, I have no doubt, be impossible if any aspect of such control or the records is left in the hands of the respondents, who have together set out to defeat or frustrate the operation of the insolvency process.

43. The provisions of the order are therefore, in summary:

- i) To the extent any title to assets of the unincorporated business was transferred to the Company, that interest is re-vested in the partnership or the bankruptcy estate as the case may be
- ii) Any right of the Company to use or retain possession of any such assets is brought to an end

- iii) The Company's interest under its new lease of the premises is vested in the partnership, as are its interests in the novated HP agreement and the former HP machines
 - iv) The Company must immediately stop conducting the business or representing itself as doing so and deliver to the claimant all its records relating to the carrying on of the business
 - v) The claimant is to have sole right to recover sums due for sales made by the business at any date and may dispose of stocks whenever acquire or created, and
 - vi) An account be taken of any sums due to the Company from disposal or realisation of any assets that had been acquired or created by it, and any benefit received from the transfer or use of assets of the unincorporated business.
44. I will fix a date for this judgment to be deemed handed down, without attendance, by sending copies to the parties and distribution to BAILII.