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Citation Number: [2020] EWHC 2965 (Ch)

Claim No: CR-202-002285

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES
INSOLVENCY AND COMPANIES COURT (ChD)
IN THE MATTER OF SAINT GEORGE INVESTMENT HOLDINGS LIMITED
(DISSOLVED) AND IN THE MATTER OF THE INSOLVENCY ACT 1986

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: Thursday, 5 November 2020

Before:

MS. PAT TREACY
(SITTING AS A JUDGE OF THE CHANCERY DIVISION)

Between:

MANOLETE PARTNERS PLC

Applicant

- and -

(1) DR AMIR SHAFIK MATTA

(2) MRS RAGHIDA MATTA

(3) MS SARA MATTA

(4) MMJ GLOBAL LIMITED

Respondents

BENJAMIN CHANNER (instructed by **Addleshaw Goddard LLP**) appeared for the
Applicant.

ADAM PORTE (instructed by **Band Hatton Button LLP**) appeared for the **Fourth**
Respondent.

Hearing date: 21 October 2020

APPROVED JUDGMENT

DEPUTY JUDGE TREACY:

Overview and parties

1. This judgment relates to an application by Manolete PLC (“**Manolete**”) for declarations and orders under sections 238 and 239 of the Insolvency Act 1986 (“**IA 1986**”) and sections 171 – 176 of the Companies Act 2006 (“**CA 2006**”).
2. Manolete is an insolvency litigation financing company.
3. The First Respondent, Dr Amir Matta, is the former sole director of Saint George Investment Holdings Ltd (“**the Company**”) which operated as the holding company of (and was the 100% shareholder for) seven other companies and a further dormant company (together “**the Group**”). Each of the seven trading companies operated a care home in North West England. Dr Matta owned 81% of the shares in the Company. The remaining shares were owned by his daughter (11%) and his son (8%). The Company went into administration and joint administrators were appointed on 4 October 2016
4. The Second Respondent, Mrs Raghida Matta, is the ex-wife of Dr Matta.
5. The Third Respondent, Ms Sara Matta, is the daughter of Dr Matta.
6. The Fourth Respondent, MMJ Global Limited (“**MMJ Global**”), is a limited company. Its registered address is in Blackpool.
7. The claim against the Second Respondent, Mrs Matta, has been settled but the facts relating to it are still relevant.
8. Witness statements have been served by: Mr Steven Cooklin CEO of Manolete; Mr Ayman Khalil, a director of MMJ Global, on behalf of the Fourth Respondent; Dr Matta; and Ms Matta.
9. At the hearing Mr Benjamin Channer appeared on behalf of Manolete. The Fourth Respondent was represented by Mr Adam Porte. The First and Third Respondents were not represented by counsel. The Second Respondent played no part in the application because of the settlement referred to in paragraph 7. Skeleton arguments were received on behalf of all parties who participated.

10. The claim was commenced by way of Originating Application on 20 April 2020, accompanied by Mr Cooklin's Witness Statement.
11. It is not disputed that:
 - (a) Between July 2015 and September 2016 Mrs Matta received payments amounting to £17,287.68 from the Company's payroll.
 - (b) Between March 2015 and September 2016 Ms Matta received payments from the Company's payroll totalling £54,368.85.
 - (c) Between 20 July 2015 and 28 January 2016 the Company paid the total sum of £70,000 to the Fourth Respondent.
 - (d) On 4 October 2016 (the date the Company went into administration and joint administrators were appointed) a director's loan account ("**DLA**") was overdrawn by £1,365,422.64.
 - (e) On 8 February 2019 any claims that the Company or its administrators may have had were assigned to Manolete.
 - (f) On 10 July 2019 the Company was dissolved.
12. Some of the events leading up to the administration of the Company and the reasons for, and precise timing of, the Company's decline and inability to pay its debts are disputed. The Statement of Proposals of the Joint Administrators ("**SoP**") dated 25 November 2016 provides some insight.
13. The SoP records that the Company had historically been profitable but that "*... both profitability and cash flow started to decline during the summer of 2015, to the extent that the Group became loss making. This impacted on the ability of the Trading Companies to ensure there was sufficient cash for the Company to continue to operate.*"
14. The SoP identifies a number of factors as having contributed to the financial difficulties of the Group, including that several of the care homes "*... found themselves under local authority or CQC embargos due to failings found during inspections*" and concludes "*... losses sustained due to the embargos and the increase*

in costs has led the Group to become, and continue to be, loss making from June 2016, which has had a significant impact on the Group's cash position".

15. Dr Matta disputes a number of the conclusions of the SoP. He also questions the conduct of a number of those involved in the circumstances surrounding the difficulties faced by the Group in the period before Administration, including the Company's bankers (Barclays) and administrators, Ernst & Young.

This application

16. Manolete seeks various declarations and orders falling essentially into two categories.
- First, that Dr Matta acted in breach of the duties he owed to the Company as a director under sections 171 to 176 of CA 2006 as a result of:
 - (i) causing or permitting payments to be made to himself from the DLA which, at the time of the Company entering administration (and for a considerable time before that), had become overdrawn; and
 - (ii) also causing or permitting unjustified and unexplained payments to be made to the Second to Fourth Respondents as set out above at Paragraph 11.

Declarations were sought in respect of those issues together with an order that Dr Matta pay £1,507,079.17 to Manolete. That sum represents the total of all the contested payments plus the outstanding balance on the DLA.

- Secondly, declarations were sought that the payments to the Third and Fourth Respondents were transactions at an undervalue under section 238 of IA 1986 or, in the alternative (in relation to the Third Respondent only by the time of the hearing), were preferential payments under section 239 of that Act. Manolete also sought orders that the Third and Fourth Respondents pay the relevant sums to Manolete.
17. Interest on all sums was also sought.
18. Each of Dr Matta, Ms Matta and MMJ Global resist the relevant aspects of the application. They have done so through a combination of witness evidence and, in the

case of Dr Matta and Ms Matta, material described as a Response, which forms part of the witness evidence served by them.

19. Dr Matta suggests that the Claim should be struck out and all the applications dismissed. As far as civil proceedings before this court are concerned, he also stated that he believes that he has a counterclaim in respect of some or all of the matters discussed at paragraph 15 above. The suggestion that the Claim should be struck out in its entirety is dealt with below. It was not possible to deal with the question of any counterclaim during the course of the current hearing and any such counterclaim or any other proceedings will need to be pursued separately.

The law

20. Provisions of two statutes are relevant to this application:
- First, the provisions of CA 2006 which set out certain duties owed by company directors to the company of which they are a director; and
 - Secondly, the provisions of IA 1986 which set out when certain transactions entered into in the period leading up to the insolvency of a company may be challenged by the administrators.
21. For convenience in reading this judgment, I set out the relevant provisions of both statutes below.
22. CA 2006:

171 *Duty to act within powers*

A director of a company must—

- (a) act in accordance with the company's constitution, and*
- (b) only exercise powers for the purposes for which they are conferred.*

172 *Duty to promote the success of the company*

- (1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for*

the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—

- (a) the likely consequences of any decision in the long term,*
 - (b) the interests of the company's employees,*
 - (c) the need to foster the company's business relationships with suppliers, customers and others,*
 - (d) the impact of the company's operations on the community and the environment,*
 - (e) the desirability of the company maintaining a reputation for high standards of business conduct, and*
 - (f) the need to act fairly as between members of the company.*
- (2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.*
- (3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.*

173 Duty to exercise independent judgment

- (1) A director of a company must exercise independent judgment.*
- (2) This duty is not infringed by his acting—*
 - (a) in accordance with an agreement duly entered into by the company that restricts the future exercise of discretion by its directors, or*
 - (b) in a way authorised by the company's constitution.*

174 *Duty to exercise reasonable care, skill and diligence*

- (1) *A director of a company must exercise reasonable care, skill and diligence.*
- (2) *This means the care, skill and diligence that would be exercised by a reasonably diligent person with—*
 - (a) *the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and*
 - (b) *the general knowledge, skill and experience that the director has.*

175 *Duty to avoid conflicts of interest*

- (1) *A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.*
- (2) *This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity).*
- (3) *This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company.*
- (4) *This duty is not infringed—*
 - (a) *if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or*
 - (b) *if the matter has been authorised by the directors.*

- (5) *Authorisation may be given by the directors—*
- (a) *where the company is a private company and nothing in the company's constitution invalidates such authorisation, by the matter being proposed to and authorised by the directors; or*
 - (b) *where the company is a public company and its constitution includes provision enabling the directors to authorise the matter, by the matter being proposed to and authorised by them in accordance with the constitution.*
- (6) *The authorisation is effective only if—*
- (a) *any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director, and*
 - (b) *the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.*
- (7) *Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.*

176 *Duty not to accept benefits from third parties*

- (1) *A director of a company must not accept a benefit from a third party conferred by reason of—*
- (a) *his being a director, or*
 - (b) *his doing (or not doing) anything as director.*
- (2) *A “third party” means a person other than the company, an associated body corporate or a person acting on behalf of the company or an associated body corporate.*
- (3) *Benefits received by a director from a person by whom his services (as a director or otherwise) are provided to the company are not regarded as conferred by a third party.*

- (4) *This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.*
- (5) *Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.*

23. In summary, while these statutory duties do not cover all the duties owed by a director, they are a high level restatement of a number of the basic principles underlying this area of the law.

24. IA 1986:

238 *Transactions at an undervalue (England and Wales)*

(1) *This section applies in the case of a company where—*

- (a) *the company enters administration, or*
- (b) *the company goes into liquidation;*

and “the office-holder” means the administrator or the liquidator, as the case may be.

(2) *Where the company has at a relevant time (defined in section 240) entered into a transaction with any person at an undervalue, the office-holder may apply to the court for an order under this section.*

(3) *Subject as follows, the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction.*

(4) *For the purposes of this section and section 241, a company enters into a transaction with a person at an undervalue if—*

- (a) *the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration, or*

- (b) *the company enters into a transaction with that person 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 the company.*
- (5) *The court shall not make an order under this section in respect of a transaction at an undervalue if it is satisfied—*
 - (a) *that the company which entered into the transaction did so in good faith and for the purpose of carrying on its business, and*
 - (b) *that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company.*

239 Preferences (England and Wales)

- (1) *This section applies as does section 238.*
- (2) *Where the company has at a relevant time (defined in the next section) given a preference to any person, the office-holder may apply to the court for an order under this section.*
- (3) *Subject as follows, the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not given that preference.*
- (4) *For the purposes of this section and section 241, a company gives a preference to a person if—*
 - (a) *that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities, and*
 - (b) *the company does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the company going into insolvent liquidation, will be better than the position he would have been in if that thing had not been done.*

- (5) *The court shall not make an order under this section in respect of a preference given to any person unless the company which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (4)(b).*
- (6) *A company which has given a preference to a person connected with the company (otherwise than by reason only of being its employee) at the time the preference was given is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (5).*

240 “Relevant time” under ss.238, 239

- (1) *Subject to the next subsection, the time at which a company enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into, or the preference given—*
- (a) *in the case of a transaction at an undervalue or of a preference which is given to a person who is connected with the company (otherwise than by reason only of being its employee), at a time in the period of 2 years ending with the onset of insolvency (which expression is defined below),*
 - (b) *in the case of a preference which is not such a transaction and is not so given, at a time in the period of 6 months ending with the onset of insolvency,*
 - (c) *in either case, at a time between the making of an administration application in respect of the company and the making of an administration order on that application, and*
- ...
- (2) *Where a company enters into a transaction at an undervalue or gives a preference at a time mentioned in subsection (1)(a) or (b), that time is not a relevant time for the purposes of section 238 or 239 unless the company—*

(a) *is at that time unable to pay its debts within the meaning of section 123 in Chapter VI of Part IV, or*

(b) *becomes unable to pay its debts within the meaning of that section in consequence of the transaction or preference;*

but the requirements of this subsection are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by a company with a person who is connected with the company.

(3) *For the purposes of subsection (1), the onset of insolvency is—*

...

(c) *in a case where section 238 or 239 applies by reason of an administrator of a company being appointed otherwise than as mentioned in paragraph (a) or (b), the date on which the appointment takes effect,*

...

249 “Connected” with a company

For the purposes of any provision in this Group of Parts, a person is connected with a company if—

(a) *he is a director or shadow director of the company or an associate of such a director or shadow director, or*

(b) *he is an associate of the company;*

And “associate” has the meaning given by section 435 in Part XVIII of this Act.

435 Meaning of “associate”

(1) *For the purposes of this Act any question whether a person is an associate of another person is to be determined in accordance with the following provisions of this section (any provision that a person is an*

associate of another person being taken to mean that they are associates of each other).

(2) *A person is an associate of an individual if that person is—*

(a) *the individual's husband or wife or civil partner,*

(b) *a relative of—*

(i) *the individual, or*

(ii) *the individual's husband or wife or civil partner, or*

(c) *the husband or wife or civil partner of a relative of—*

(i) *the individual, or*

(ii) *the individual's husband or wife or civil partner.*

...

(8) *For the purposes of this section a person is a relative of an individual if he is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, treating—*

(a) *any relationship of the half blood as a relationship of the whole blood and the step-child or adopted child of any person as his child, and*

...

123 Definition of inability to pay debts

(1) *A company is deemed unable to pay its debts—*

...

(e) *if it is proved to the satisfaction of the court that the company is unable to pay its debts as they fall due.*

(2) *A company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.*

25. In summary, taken together, these provisions have the effect that once a company has entered a formal insolvency process, some transactions which took place before that process began can be challenged by the administrators. The purpose of the powers is, broadly, to help the administrator to achieve the best return for the company's creditors by ensuring that any arguably improper transactions are reviewed by the Court and, if appropriate, that an order can be made undoing the effect of the transaction. Certain presumptions are provided by the statute and certain special rules apply to those who are 'connected' to the company. This includes directors and their families.

The claims against Dr Matta

26. The claims against Dr Matta are brought under CA 2006 and fall into two categories:

- first, those relating to the DLA; and
- secondly, those relating to the payments to the Second, Third and Fourth Respondents which are said to have been payments made without a proper basis, being either transfers at an undervalue contrary to section 238 of IA 1986 or preferences contrary to section 239 of that Act.

27. Below I deal first with the issues arising from the DLA, before turning to the various payments made to the Second to Fourth Respondents.

DLA

28. Mr Channer's position for the Applicant was that the claim against Dr Matta for the sum outstanding in respect of the DLA is self-explanatory. The debt existed at the time of the administration, having been built up over a number of years and was therefore a debt owed to the Company which fell to be repaid. It has been assigned to Manolete and Dr Matta is, therefore, now liable to Manolete.

29. Mr Channer also argued that Dr Matta's conduct in relation to the DLA over a lengthy period, at a significant level, and his use of it for purposes related to personal expenditure amounted to a breach of his duty to the Company, particularly under sections 172 to 174 of CA 2006. Mr Channer referred to a number of the payments funded from the DLA, as set out in the witness evidence of Mr Cooklin and the supporting exhibits. He submitted that many of these expenditures (including those related to the purchase and maintenance of a yacht and in relation to a divorce settlement) were quite clearly personal expenditure of Dr Matta, were not associated with the Company's business and could not therefore be in the interests of the Company. He also drew my attention to evidence suggesting that the longstanding nature of the DLA had resulted in a significant tax charge under section 455, noting that this had not led to the repayment of the loan nor to any other change in its treatment.
30. Dr Matta, on his own behalf, responded by saying, in summary, that when he bought personal items of luxury nature the Company was rich and successful and making a significant profit. In particular, he noted that Company had well over £600,000 in cash in December 2015.
31. Dr Matta did not dispute that the payments were made in respect of personal expenditure, nor did he submit that they were in the best interests of the Company. Dr Matta explained that he had intended to convert the DLA into dividends, but that this intention had been thwarted by the Company's eventual administration. Dr Matta did not explain why he took no steps to deal with the longstanding indebtedness under the DLA during the period leading up to formal insolvency, but stated that he had never been advised to regularise the position with the DLA.
32. Dr Matta submitted that the Company (and the Group) failed only because of the involvement of third parties, beginning with a period when which he was abroad during 2015. The Company was, he submitted, still in good financial shape during 2015. He argued strongly that the eventual insolvency was unconnected with the payments made from the DLA.

Conclusion on DLA

33. Company directors owe clear and important duties to the companies of which they are directors. A number of those duties are encapsulated in sections 171 to 176 as set out above. The duties are owed to the company in question, not to the shareholders. The principal and overarching duty is set out in section 171. It is to act in accordance with the company's constitution and to exercise powers only for the purpose for which they are conferred. More specifically, a director must exercise his or her powers so as to promote the success of the company for the benefit of its members as a whole as required by section 172 of the Act. It is necessary in doing so to exercise reasonable care, skill and diligence as required by section 174. In certain circumstances directors may be obliged to consider or act in the interests of creditors, for example as a company nears insolvency. The fundamental duty is, however, to exercise powers for the purpose for which they are granted.
34. I accept the submissions of Mr Channer that a director's powers to authorise payments from a company's funds are not granted to enable directors to pay for or fund very significant personal items of expenditure on a long term basis. I also accept that authorising such payments on a continuing and long term basis, and taking no steps to regularise the position is a breach of the duty to act in a way most likely to promote the success of the Company.
35. Dr Matta has argued that when the payments were made the Company was in a position to afford them. That is not an answer to the issue that arises under CA 2006. I accept Mr Channer's submission that by failing to regularise the situation over a period of many years, including once a tax charge had been levied on the Company as a result of the position and as the Company's financial position became less favourable, Dr Matta was in breach of his obligation to exercise reasonable skill, care and diligence in carrying out his duties. In addition, as at the date of the Company's entering administration, the loan from the Company was still outstanding and there is no basis not to require Dr Matta to repay it.

Payments to the Second and Third Respondents

36. The Applicant's position in relation to the payments to Ms Matta and Mrs Matta is, in essence, that these were improper payments. Mr Channer submitted that it is entirely

unclear on what basis the payments to either Ms Matta or Mrs Matta were made and that there is therefore a significant question mark whether they were for the benefit of the Company and/or whether they were transactions at an undervalue contrary to section 238 of IA 1986 or preferences contrary to section 239 of IA 1986.

37. In summary, Mr Channer submitted that:

- there was no evidence of the existence of any employment relationship between the Company and either Ms Matta or Mrs Matta in that neither appeared to have a written contract of employment;
- even if some services were rendered, there was nothing to indicate that they justified the payments that had been made;
- the payments made to Ms Matta in April 2015 which were described variously as a settlement or severance payment were payments made at the behest of Dr Matta and were not payments the Company was obliged to make (not least because the draft settlement agreement had not been signed);
- Ms Matta continued to receive money from the Company's payroll after the monies under the settlement agreement had been paid and the termination date provided in the agreement (30 April 2015) had passed.

38. Mr Channer further submitted that those payments were made at a 'relevant time' within the meaning of the Act, being two years ending with the onset of the Company's insolvency (when the joint administrators were appointed in October 2016) because both Ms Matta and Mrs Matta were connected to the Company. In those circumstances Mr Channer relied on the statutory presumptions that the Company was insolvent at the time when the payments were made or was rendered insolvent as a result of them. Mr Channer took the position that no evidence had been offered to rebut the statutory presumption and also submitted that in any event, the Company was not in a position to pay its debts at the time the payments were made. He relied on various matters set out in the SoP, some of which are mentioned above at paragraphs 13 and 14.

39. In relying principally on those matters, and on statements made to the administrators by former employees of the Company, Mr Channer noted that as his clients had acquired the cause of action by way of assignment it was difficult for them to produce contemporaneous evidence of the facts relied on. However, he accepted that this did not change the nature of any obligations to adduce sufficient evidence to which his clients might otherwise be subject.
40. Finally, Mr Channer submitted that, in the event that some or all of the payments to Ms Matta were held to have been owed to her by virtue of her position as an employee and not, therefore, to be either a transaction at an undervalue or a gift, they should be treated as preference payments under section 239 of IA 1986, as they put her in a better position than other creditors. In this connection he relied on the presumption that, as Ms Matta was a connected person, the Company would have been influenced in paying her by a wish to prefer her over other creditors.
41. Both Dr Matta and Ms Matta disputed the facts put forward by Mr Channer and/or the inferences he sought to draw from them.
42. Ms Matta, in particular, disputed the points made by Mr Channer about her employment status, the duties she undertook and the status of the severance/settlement agreement. Ms Matta referred to evidence that she had worked for the Company and, in particular relied on the existence of an unsigned settlement agreement. She noted that this had been provided to her by the HR department of the Company, and was described in the covering letter as having been discussed with the then Managing Director of Matta Care Group, Andrew Thornton. Ms Matta submitted that contracts do not have to be reduced to writing or signed in order to take effect. Having reviewed that letter during the hearing, I note that the letter states in terms that “*we understand that payment made in accordance with this agreement is not subject to tax, however, this may not be the case if the agreement is not signed and returned*”. Payment was subsequently made in line with the terms of the unsigned agreement.
43. Ms Matta’s employment status and the nature of her duties after 1 June 2015, being the date on which the settlement agreement was dated (though not signed) are wholly unclear. The agreement states that Ms Matta’s employment was terminated on 30 April 2015. The agreement is also stated to be between Matta Care Group Limited

and Ms Matta. It makes no reference to the Company, although Ms Matta's evidence refers to Mr Thornton as possibly being "*the newly appointed St George Chief Executive*".

44. In evidence Ms Matta states that she assisted Dr Matta behind the scenes and that she was working for St George until told to stop doing so by the administrators in October 2016. Ms Matta states that this included working from time to time at 'head office' up until December 2015.
45. Dr Matta's skeleton argument states that he asked Ms Matta to assist him by, among other things, attending meetings with the auditors and solicitors and 'investigating company corruption'. He notes that she was not allowed to take an active part but his position appears to be that Ms Matta was assisting him in seeking to resolve some of the difficulties in which the Company (and the Group) found itself.
46. In addition to dealing briefly with the nature of Ms Matta's duties and the rationale for her continuing payment by the Company, Dr Matta also disputed the factual basis for Mr Channer's submissions that throughout all or part of the period during which the payments alleged to be either transactions at an undervalue or preferences were made the Company could either be presumed to have been insolvent under section 240(2) or was in fact unable to pay its debts within the meaning of section 123 of IA 1986 so that any payments were made at a 'relevant time' within the meaning of section 240 of IA 1986.
47. Dr Matta referred to various documents attached to his evidence which he contended showed that the presumption on which Mr Channer relied was capable of being overturned and that Mr Channer had not established that the Company was unable to pay its debts within the meaning of section 123 of IA 1986 at any relevant point in time.
48. At this point, I should mention that Dr Matta's submissions on this issue were echoed by Mr Porte on behalf of the Fourth Respondent who noted that the evidence seemed to suggest that, rather than the Company being insolvent in June 2015 (or indeed in early 2016, the time at which payments were being made to his client), the Group became loss making from June 2016, and that up until the middle of 2016 it was making a profit. Mr Porte referred in particular to the remarks in the SoP which he

said did not support the inferences suggested by Mr Channer, but rather suggested that the Company had remained solvent for around 12 months after the time suggested by Mr Channer.

Conclusions on payments to Second and Third Respondents

49. Today's application is for determination without a full hearing. Matters fall to be determined without a full hearing only where the Court is persuaded that the case is capable of being made out on the basis of the evidence before it. Mr Channer, on behalf of the Applicant, submitted forcefully that this was the appropriate course of action in respect of the entire application. Dr Matta and Ms Matta disagreed. In relation to the DLA, I agree with Mr Channer and have reached the view set out at paragraphs 33 – 35 above.
50. In relation to the arguments under IA 1986 (and the related implications for Dr Matta as a director under CA 2006), Mr Channer drew my attention to those parts of the relevant acts that contain presumptions against those involved as directors of companies in situations where insolvency is involved, so as to protect the interests of creditors.
51. The Respondents strenuously argued that it would not be appropriate for the Court to rely on the statutory presumptions in circumstances where the evidence had not been fully explored and tested.
52. Having heard from all relevant parties in oral argument, and having reviewed the available evidence, I have concluded that some key elements of the Applicant's case are not sufficiently established to reach a conclusion on whether the payments to Ms Matta and Mrs Matta were transactions at an undervalue of preferences within the meaning of sections 238 and 239 of IA 1986.
53. On the basis of the evidence as it stands and in the context of a short two hour hearing, with no ability to probe the evidence in any depth, it is not possible to reach any conclusion about matters such as the nature of the duties carried out by Ms Matta and Mrs Matta; whether these were carried out under a contract of employment (albeit unwritten) and whether they provided value to the Company (and if so, how much); the basis on which Ms Matta was paid under the settlement agreement in June 2015;

and the nature and basis of any duties subsequently carried out by Ms Matta for which she was paid from the Company's payroll.

54. While I can see that there is a significant question about the propriety and value to the Company of payments made to Ms Matta after the payment of the settlement monies, taken in the round, I am unable to reach a conclusion about the nature of the relationship between Ms Matta and the Company. The same goes for the payments made to Mrs Matta, about which there was even less evidence.
55. As to whether these were payments made at a time when the Company was unable to pay its debts within the meaning of section 123 of IA 1986 at the time when each of the disputed payments was made, I find it very difficult to see how this can be established without a proper review of the evidence which goes far beyond what is possible in a summary hearing such as this.
56. The courts have held in the past “... *that the question whether the Company was unable to pay its debts within the meaning of section 123 at the time when each of the disputed payments was made is a question that cannot possibly be determined on a summary basis*”. [*Phillips & Another v McGregor-Paterson* [2009] EWHC 2385 (Ch) Henderson J, paragraph 47]
57. It is also difficult to see, in the light of the evidence currently available, how I can safely conclude that the payments were made at a time which could be presumed to be a relevant time or that the Respondents would be unable to overcome the statutory presumptions. In the *Phillips* case, referred to above, Henderson J considered this issue in the context of a section 239(6) case and said: “... *I do not understand how the Master felt able, without a trial, to conclude that the defendant had been unable to overcome the presumption in section 239(6). The subsection reverses the burden of proof with regard to intention when the beneficiary of the preference is a person connected with the Company, but that is not to say the burden can never be discharged. Save in the clearest of cases, it will only be possible after a trial to determine whether or not the statutory presumption has been rebutted.*” [paragraph 47]
58. In the light of those considerations, my conclusion is that the applications in relation to the payments to the Second and Third Respondents should be refused and that the

Applicant, First and Third Respondent should now seek to agree appropriate directions to bring this matter before the Court at a full hearing. As previously indicated in paragraph 7, the claims against the Second Respondent have been settled.

Payment to the Fourth Respondent

59. Two issues arise in relation to the payments to the Fourth Respondent.
60. The first is whether these were payments made by Dr Matta in breach of his duties to the Company as discussed above and the second is whether these were reviewable transactions as provided for by IA 1986 for which MMJ Global may be liable.
61. As to the first issue, the evidence is that these payments were made in relation to charitable donations on behalf of Dr Matta to Coptic Church causes in Egypt. Dr Matta does not argue that the payments were made to benefit the Company or in furtherance of his obligations and duties as a director. He says simply that there were dealings between him and Ayman Khalil which were dealt with through his DLA. Given that, and the time at which they were paid, I conclude that those payments were authorised by Dr Matta in breach of his duties under CA 2006 and that he is liable in respect of them under that Act.
62. As to the second, for the reasons given above, it is impossible to conclude at this point that these payments were made at a time when the Company was not in a position to pay its debts.
63. There is also considerable debate about whether the dealings referred to amounted to a transaction within the meaning of section 238 of IA 1986. Mr Porte argued that the events in question related to an arrangement between Dr Matta in his personal capacity and Mr Khalil in his personal capacity and was neither a transaction under value nor a gift. Mr Channer disagreed. Given the conclusion that I have reached above about the liability of Dr Matta for these payments, and Mr Channer's acceptance on behalf of his clients that double recovery is not sought, I do not have to reach a conclusion on those issues. I decline to make the orders and declarations sought in respect of the Fourth Respondent.

Conclusions

64. In summary:

- Dr Matta has breached his obligations under CA 2006 in respect of his dealings with the DLA and is liable to pay the Applicant the sum in respect of which the DLA was overdrawn as at the date on which the Company was placed into administration.
- Dr Matta has breached his obligations under CA 2006 in respect of his payments to the Fourth Respondent and is liable to the Applicant for those sums.
- The applications in respect of the payments to the Second, Third and Fourth Respondents under IA 1986 are refused.
- The applications under CA 2006 in relation to the payments to the Second and Third Respondents are refused.

65. Consequential issues, the form of order and costs will be dealt with separately.