



Neutral Citation Number: [2023] EWHC 829 (Ch)

Case No: CR-2020-000721

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

IN THE MATTER OF CENTRAL PROPERTIES HOLDINGS LIMITED (IN
ADMINISTRATION)

Royal Courts of Justice, Rolls Building,
Fetter Lane, London, EC4A 1NL

Date: 14 April 2023

Before :

DEPUTY ICC JUDGE CURL KC

Between :

**JAMES DOUGLAS ERNLE MONEY
AND STEVEN EDWARD BUTT
(AS JOINT ADMINISTRATORS OF
CENTRAL PROPERTIES HOLDINGS LIMITED
(IN ADMINISTRATION)**

Applicants

Morgan Bowen, solicitor of Mills & Reeve LLP, for the Applicants

Hearing date: 25 January 2023

APPROVED JUDGMENT

This judgment was handed down remotely at 10.30am on Friday 14 April 2023 by circulation to the parties or their representatives by email and release to the National Archives

Deputy ICC Judge Curl KC:

1. An application made by the joint administrators (“Administrators”) of Central Properties Holdings Limited (in administration) (“Company”) dated 22 December 2022 seeking various relief came before the court on 25 January 2023. As things stood at the hearing, the administration of the Company was due to end on 5 February 2023. Having heard the submissions of Mr Bowen concerning the need for an extension of the Administrators’ term of office in order for a CVA to be implemented, I made an order on that occasion extending the administration to 5 August 2024. As the other relief sought by the Administrators was out of the ordinary and the matter had only been listed for 15 minutes in a busy list, I reserved my judgment on the balance of the application.
2. This judgment concerns the further relief sought by the Administrators. They seek an order providing for (a) the termination of the administration pursuant to para 79 of Sch B1 to the Insolvency Act 1986 (“IA 1986”) conditional upon the successful completion of the Company’s CVA; and (b) the discharge of the Administrators from liability conditional upon the termination of the administration in accordance with (a). The circumstances in which that relief is sought are as follows.

The facts

3. The Company is a property development company incorporated in Guernsey in April 2017. Mr Alkadhi was its sole director and shareholder. The Company borrowed £10 million on an unsecured basis from UB Group FZE (“**UB Group**”) in 2017, which was used to purchase properties. Subsequently, the Company entered into a loan agreement and debenture with QIB (UK) Plc (“**QIB**”) in May 2018 and another with Octane Property Finance Limited (“**Octane**”) in April 2019. Upon the Company encountering liquidity difficulties in the summer of 2019, and UB Group learning for the first time of the Company’s indebtedness to QIB and Octane, Knightsbridge Property Holdings Limited (“**Knightsbridge**”), which is a company associated with UB Group, took an assignment of Octane’s rights in January 2020. Knightsbridge then applied to court for an administration order, which was granted by His Honour Judge Cooke (sitting as a High Court judge) on 6 February 2020. Knightsbridge subsequently took an assignment of QIB’s rights in March 2020. Mr Alkadhi was made bankrupt on the petition of UB Group on 6 November 2020.
4. Knightsbridge is the Company’s only secured creditor. The unsecured claims (in the total sum of £12,931,885) have not yet been adjudicated. On any view UB Group is the largest unsecured creditor and will account for at least 94.82% of all such claims.
5. The administration has involved the completion of development works, sales and lettings of properties, and investigation work relating to the conduct of Mr Alkadhi. A one year extension to the Administrators’ term of office (to 5 February 2022) was made with creditor consent under para 76(2)(b) and a further one year extension (to 5 February 2023) was subsequently granted by

the court under para 76(2)(a) of Sch B1. As noted above, I granted a further extension to 5 August 2024 under para 76(2)(a) at the hearing on 25 January 2023.

6. It is proposed that the Company should make a solvent exit from administration via a CVA. The CVA was approved on 23 December 2022. Under the CVA, Knightsbridge will pay £57,580 to the supervisors (who are the same individuals as the Administrators) within one month of its approval. UB Group will release its claims against the Company, although neither Knightsbridge nor UB Group will participate in any dividends in the CVA.
7. Following payment of the remaining costs and expenses of the administration and of the CVA, the unsecured creditors other than UB Group will have their claims adjudicated and paid *pari passu*. It is intended that the distribution will be made within six months of the approval of the CVA (i.e. by 23 June 2023) but the Administrators anticipate the possibility of a delay if there is any dispute in relation to the adjudication of claims. As to this, the Administrators have identified in their supporting evidence what is described as “*a considerable lack of clarity*” in relation to two of the unsecured claims and a further question mark over another. The Administrators have rightly drawn to the court’s attention the possibility that there may be a dispute over their adjudication in the CVA.
8. It is proposed that the Administrators will remain in place until after the CVA has successfully completed. I am told that this is in order to obtain the continuing benefit of the moratorium and to prevent the Company returning to the control of its directors prior to the completion of the CVA.

The relief sought

9. The Administrators’ position was as follows. An administrator appointed out of court under paras 14 or 22 of Sch B1 may terminate an administration under para 80 of Sch B1 where they think that the purpose of administration has been sufficiently achieved by filing a notice with the court and the registrar of companies. That method of termination is not available to the Administrators because they were appointed by a court order. Where the relevant conditions are satisfied, an administrator appointed by a court order may move a company from administration to CVL under para 83, or from administration to dissolution under para 84, without a further court order: *Re Ballast plc (in administration)* [2004] EWHC 2356 (Ch), [2005] 1 All ER 630. Otherwise, an administrators appointed by the court requires a further order of the court to bring the administration to an end under para 79 of Sch B1, sub-para (1) of which provides that on the application of an administrator, the court may provide for the appointment of an administrator to cease to have effect from a specified time.
10. In the present case, the Administrators do not propose to exit into either liquidation or dissolution but instead anticipate (subject to the successful completion of the CVA) a solvent exit from administration. Accordingly, they will require an order of the court under para 79 of Sch B1 in order to end the administration. The Administrators invite the court to make a prospective

conditional order under para 79 providing for the administration to terminate automatically under the following conditions:

“Pursuant to paragraph 79, Schedule B1, IA the Company’s administration be automatically terminated conditional on the successful completion of the Company’s CVA and taking effect on the filing by the Administrators with the court of both of (i) the notice of successful completion of the Company’s CVA together with the CVA supervisors’ final report on the same; and (ii) the notice of termination of the Company’s administration together with a final progress report for the Company’s administration;”

11. A conditional order to bring the administration to an end is not, however, sufficient. The Administrators also require a conditional order providing for their discharge from liability under para 98 of Sch B1. They seek a further prospective conditional order as follows:

“Pursuant to paragraph 98(2)(c), Schedule B1, IA, alternatively paragraph 79, Schedule B1, IA, the time of discharge of the Administrators from liability as administrators of the Company be fixed at a date 28 days after the termination of the administration provided such termination occurs in accordance with the circumstances for termination as specified in para 2 [set out at §9 above]...;”

12. If these heads of relief are granted, then no further application to court should be necessary as long as the CVA is successfully completed. In other words, the proposed relief is framed so that the Administrators’ discharge from liability is conditional on termination of the administration in accordance with the order, which is itself conditional upon the successful completion of the CVA. If the CVA fails to complete, then neither condition will be capable of being satisfied, the administration will have to be concluded in some other way, and the Administrators will require a further court order to obtain a discharge.
13. The Administrators’ thinking in seeking a conditional order for automatic termination of the administration and discharge from liability is to avoid the need for a further application to court in the event that the CVA is successfully implemented. Mr Bowen submitted that such a further trip to court would add unnecessarily to the costs of the administration to the detriment of the Company’s creditors for no countervailing benefit to them.
14. Mr Bowen’s submissions concentrated on the court’s jurisdiction to make a conditional order for the Administrators’ discharge from liability. This was presumably because unless a conditional order for discharge is made, a further application to court would in any event be necessary, whether or not a conditional termination order were to be made today. Accordingly, I also focus on the conditional discharge limb of the application in what follows.
15. In support of his application for a conditional order, Mr Bowen referred me to the recent decision of Hildyard J in *Re Lehman Brothers International (Europe) (in administration)* [2022] EWHC 2995 (Ch). That case concerned applications by administrators of eight companies in the Lehman group variously seeking extensions under para 76(2)(a) and/or discharge from liability under para 98 of

Sch B1. In the case of one of the companies (“LBUKRE”), the administrators sought an extension of the period of the administration for six months together with an order that they be discharged from liability 28 days after they sent their final progress report to LBUKRE’s creditors, save in respect of any claims notified to them before that date. All that remained to be done in the administration was to agree the final tax position with HMRC, pay any outstanding tax, and distribute the remaining assets to the sole remaining creditor, which was another Lehman company. After that, it was anticipated that LBUKRE would exit administration into dissolution under para 84 of Sch B1 without the need for any further order of the court.

16. After examining the principles and case law surrounding the discharge of administrators from liability under para 98 of Sch B1, Hildyard J noted at [98] that there was “*an element of futurity and at least a theoretical possibility of some change of circumstances...*” in making any conditional order for discharge while steps in the administration remained to be taken. Having decided that there was no jurisdictional impediment to the relief sought, Hildyard J nonetheless decided not to make an order for discharge at that stage. While noting that the decision may have been over-cautious, his Lordship considered that the possibility of unexpected delays with HMRC encouraged caution, and declined to make the order, instead standing the application over to be dealt with at a later date on paper by reference to the administrators’ last progress report.
17. Mr Bowen submitted that Hildyard J’s decision puts beyond question that the court has jurisdiction to make the kind of conditional order under para 98 of Sch B1 sought by the Administrators and, further, that such jurisdiction should be exercised in the instant case. The Company’s circumstances, submitted Mr Bowen, could be readily distinguished from those of LBUKRE in ways that supported the grant of conditional relief. Firstly, by reason of the CVA having become effective, the supervisors will have conduct of all remaining matters of significance and, if the CVA successfully completes, there are no further steps for the Administrators as take as administrators, save for statutory filings; the only reason for the administration to continue is to continue the moratorium and disable the powers of its existing directors, which does not require any positive steps by the Administrators. This contrasted with LBUKRE’s position, where settlement of tax and a further distribution was yet to take place. Secondly, the position in the instant case is less complex generally and the risk of claims accordingly lower. Thirdly, the majority unsecured creditor (UB Group) and the only secured creditor (Knightsbridge) both support the applications, whereas in LBUKRE’s case there were two parties with an economic interest, only one of which had positively confirmed that it had no objection to the relief sought.

Decision

18. Following the analysis of Hildyard J in *Re Lehman Brothers International (Europe) (in administration)*, it is clear that the court has jurisdiction to make a conditional order for an administrators’ discharge from liability under para 98 of Sch B1. Nonetheless, and despite the careful thought that has evidently gone into the Application and Mr Bowen’s excellent presentation of his client’s position, I decline to exercise the jurisdiction to make a conditional order in this case for the following reasons.

19. Firstly, although it is anticipated that the Administrators will have little further function to perform as administrators by reason of the existence of the CVA, it nonetheless remains the case that the Administrators remain officers of the Company pursuant to para 69 of Sch B1 and have all the powers of management of it. The Company is not under the control of its directors (see para 64 of Sch B1) and one of the reasons identified by the Administrators for continuing the administration while the Company is in CVA is precisely in order to maintain the directors' disability from exercising their powers. Although it is anticipated that the supervisors will take the necessary steps that remain to be taken prior to a solvent exit from administration, it is nonetheless the case that throughout the time that the CVA is in place it is the Administrators (not the supervisors) that will have ultimate managerial power over the Company. While the CVA is expected to lead to a distribution within six months of approval of the CVA (i.e. by 23 June 2023), the Administrators anticipate at least the possibility that there will be a delay in achieving this if any creditor challenges the adjudication of their debt, and the evidence indicates that such challenges appear to have a real prospect of being made in this case. It is accordingly possible that the Administrators will remain the officers of the Company with the CVA in place for a significant period. Even if it is currently considered unlikely that the Administrators will need to do very much as administrators, it is in my judgment not appropriate to provide a prospective discharge from liability for such a potentially lengthy period during which the Administrators will remain in place as the Company's officers.
20. Secondly, apart from the potentially extended period of time for which the conditional order for discharge is sought, the enhanced possibility in this case that challenges may be made to the adjudication of debts in the CVA leads me to conclude that I should not make the release of the Administrators conditional upon the successful completion of the CVA. Any such dispute over adjudication will potentially bear upon the question of whether or not the CVA can complete successfully. If I make an order that the Administrators' discharge from liability is conditional upon successful completion of the CVA, then whether or not the Administrators may have an effective discharge from liability without a further visit to court has the potential to become bound up with any dispute over the adjudication of claims in the CVA. It is possible that a creditor in dispute with the supervisors might attempt to use it as a bargaining chip in negotiations and I do not consider it to be desirable to have the question of an Administrators' discharge available to become tangled up in a dispute in a CVA in this way. None of this is necessarily likely to happen but the fact that it is conceivable is sufficient, absent a crystal ball, to persuade me that this is not an appropriate case to make an innovative form of conditional order. I note that in LBUKRE, it was intended (and intended only) that the company would exit administration via para 84 of Sch B1 into dissolution. Accordingly, the condition to which the administrators' proposed prospective discharge from liability was subject in the case before Hildyard J was straightforward and had fewer moving parts compared with the form of conditionality proposed by the Administrators.
21. For these reasons I decline to make a conditional order under para 98 providing for the discharge of the Administrators from liability. As it will now be necessary for the Administrators to return to court to seek an order for their

discharge in the event that the CVA successfully completes, and it has not been suggested that there is any benefit to the administration in making a stand-alone conditional order providing for the administration to be brought to an end under para 79 without also making an order for the Administrators' discharge, I need not consider that limb of the application any further. Both heads of relief can be sought once it is known whether and when the CVA has successfully completed.

Postscript

22. After this judgment was circulated in draft, the court received an email from Mr Bowen requesting that the application for discharge be stood over to be restored to the court at the Administrators' request when the administration has completed to be dealt with on paper. A similar direction to this was made by Hildyard J in relation to LBUKRE at [102] of the judgment discussed above. For essentially the same reasons as those for which I have declined to make a conditional order, I also decline to stand the application over. This case is considerably more complex than that of LBUKRE with too many moving parts to make such a course appropriate. In particular, in LBUKRE, there was only one proposed out-of-court exit route from administration under para 84, whereas in this case how the administration will end is currently an open question, which depends on whether or not the CVA successfully completes. Further, unlike the position in LBUKRE, I would need to stand over not only the application for the Administrators' discharge from liability under para 98 of Sch B1 but also an application under para 79 for the Administrators' appointments to cease to have effect. These are not applications that are generally dealt with on paper and I do not consider that matters are sufficiently progressed to be able to deviate from the usual course in this case.