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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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**CHANCERY DIVISION
(COMPANIES' INSOLVENCY)**
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IN THE MATTER OF BEDFORD HOTEL LIMITED (IN ADMINISTRATION)

**AND IN THE MATTER OF THE INSOLVENCY (NORTHERN IRELAND)
ORDER 1989**

**Mr Dunlop QC with Mr Fletcher of counsel (instructed by A&L Goodbody Solicitors) for
the Applicants**

**Mr Colmer QC with Mr Atchison of counsel (instructed by TLT Solicitors) for Lyell
Trading Limited**

Mr Harvey, solicitor for Mr and Mrs Foster

McBRIDE J

Application

[1] By summons dated 12 May 2021, Michael Lennon and Matthew Ingram, as joint administrators of Bedford Hotel Ltd, seek an order of the court pursuant to paragraph 72(1) of Schedule B1 of the Insolvency (Northern Ireland) Order 1989 (as amended) (“the 1989 Order”) permitting the sale of the property known as the George Best Hotel, Scottish Mutual Building, Donegall Square South, Belfast, BT1 6JH which is comprised within folios AN159470 and AN159401, Co Antrim (“the Property”) as if it were not subject to any security and an order as to the application of the sale proceeds.

Representation of interested parties

[2] The applicants were represented by Mr Dunlop QC and Mr Fletcher of counsel.

[3] The proceedings were served on Lyell Trading Limited (“the lender”). The lender was represented by Mr Colmer QC and Mr Atchison of counsel.

[4] As appears from the affidavit evidence sworn by Mr Corbett, solicitor, on 29 June 2021, 24 September 2021 and 5 October 2021 there are a large number of individuals who separately made investments in the company and they are collectively known as the “bedroom investors.”

[5] On 21 May 2021 and 24 September 2021 the joint administrators applied to the High Court for directions as to the appropriate parties to be served with the application and the method of service of proceedings, as it was recognised that there were a large number of other investors, many of whom resided outside the jurisdiction.

[6] The affidavits in support of these applications filed by Mr Corbett, showed the strenuous efforts made by the joint administrators to identify and ascertain the whereabouts of all interested parties to the present proceedings and all attempts made to notify them of the proceedings.

[7] As a result of the orders made by this court and, in particular, the order dated 8 October 2021 which set out the names and addresses of the 72 investors in the schedule and which further stipulated the mode of service of proceedings, this court is satisfied that all the relevant parties have been identified and served with notice of the proceedings.

[8] Mr and Mrs Foster, who were represented by Mr Harvey of Peden & Reid Solicitors, unlike the other bedroom investors rescinded the sale agreement and thereafter obtained a monetary judgment against the company. That judgment has been registered as an order charging land against the folios comprising the property, which said charge was registered after the legal charge held by the lender.

[9] All of the bedroom investors are litigants in person. Some appeared in person via sight link, 23 filed affidavit evidence and some made oral submissions to the court; including Mr Stephen Kearney, who essentially set out the common position of the bedroom investors and in that sense represented their interests. In addition the court also heard oral submissions from Ms Diane Basterfield and Ms Claire McGaughey.

[10] The court is very grateful to all parties who filed skeleton arguments and made written and oral submissions. All of these proved to be of much assistance to the court.

Evidence

[11] The evidence in support of the application is contained within the affidavits of Mr Michael Lennon sworn on 13 May 2021, 24 March 2022 and 25 May 2022 together with the exhibits thereto.

[12] Mr Higson swore an affidavit on behalf of the lender on 14 February 2022 and Mr Troughton, director of the lender, filed an affidavit on 31 May 2022.

[13] In addition, a number of bedroom investors filed affidavit evidence and 17 filed “personal stories” in which they described the impact the loss of this investment is having on their lives and futures. A number of bedroom investors filed emails with the court office in which they essentially set out that they were in agreement with the submissions being made by Mr Kearney and Ms Basterfield.

Factual Background

[14] The factual background is set out in the affidavit evidence of Mr Lennon and Mr Higson:

- (a) The company was placed into administration by the out of court appointment route available under the 1989 Order by Lyell Trading Limited, the lender, which was the holder of a qualifying floating charge dated 26 October 2018 over the assets and undertakings of the company.
- (b) The joint administrations were appointed on 24 April 2020.
- (c) The company is the registered owner of the property known as the George Best Hotel, Scottish Mutual Building, Donegall Square South, Belfast, BT1 6JH, which is comprised in folios AN159470 and AN159401 Co Antrim.
- (d) Lyell Trading Limited is the holder of a first ranking legal charge over the folios comprising the hotel and the charge was registered in the Land Registry on 9 January 2019. A debenture entered into between the Company and the lender dated 26 October 2018 was registered at Companies House via a Certificate of registration of a charge on 29 October 2018.
- (e) The company acquired the property with the intention of redeveloping it to operate it as a hotel known as the George Best Hotel (“the Hotel”). The hotel is not finished, the level of completion is less than 70% and the likely investment required to bring about completion is approximately £2m although it could be much higher depending on a number of considerations including costs of labour and material and the attitude of the Belfast City Council in respect of various planning/building control issues.
- (f) Upon appointment the joint administrators became aware that there were a large number of individuals who had invested in the company. Each of these individuals advanced monies to the company with the expectation that they would have an interest in a bedroom in the hotel once the construction works were completed. (“The bedroom Investors”)

- (g) The bedroom investors entered into contractual agreements to purchase a long leasehold interest from the company and with payment being made up front to the company in the sum of 25%, 50% or 100% of the ultimate purchase price.
- (h) Under the contract it was specifically provided that a deposit would be used by the company in the construction of the building as a hotel. Completion was to take place at the latest by 10 January 2019 and if the building was not completed on that date the investor was entitled to rescind the agreement for sale.
- (i) The building was not completed within the proposed timescale and as far as the joint administrators are aware no leasehold agreements have been entered into between the company and the bedroom investors. Some (but not all) of the investors have sought to rescind their contracts.
- (j) On the basis of the books and records of the company, the joint administrators understand that the company received circa £4m from the various bedroom investors with such funds being used by the company to fund the development of the hotel. Consequently, the funds provided by the bedroom investors are not held by the company as identifiable funds capable of being repaid to the bedroom investors and the joint administrators therefore do not hold the bedroom investors' funds.
- (k) Two bedroom investors are in a slightly different position to the other bedroom investors as a whole. Julie and Peter Foster obtained a judgment against the company dated 8 November 2019 and subsequently secured an order charging land which has been registered on 6 February 2020 against both of the Land Registry folios that comprise the property.
- (l) The remaining bedroom investors have not registered any burden or other interest against the land registry folios that comprise the property.

Relevant Legislation

[15] The joint administrators consider that a sale of the property in its current state of completion, free from the secured interests is the best option available to them to achieve the purpose of the administration. As a consequence they have brought the present application under paragraph 72 of Schedule B1 of the 1989 Order.

[16] Paragraph 72 of Schedule B1 of the 1989 Order provides as follows:

“72.—(1) The High Court may by order enable the administrator of a company to dispose of property which is subject to a security (other than a floating charge) as if it were not subject to the security.

(2) An order under sub-paragraph (1) may be made only –

- (a) on the application of the administrator, and
- (b) where the court thinks that disposal of the property would be likely to promote the purpose of administration in respect of the company.

(3) An order under this paragraph is subject to the condition that there be applied towards discharging the sums secured by the security –

- (a) the net proceeds of disposal of the property, and
- (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the property at market value.

(4) If an order under this paragraph relates to more than one security, application of money under sub-paragraph (3) shall be in the order of the priorities of the securities.”

[17] The purpose of administration of the company is set out at Schedule B1 paragraphs 4 and 5 as follows:

“4.—(1) The administrator of a company must perform his functions with the objective of –

- (a) rescuing the company as a going concern, or
- (b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or
- (c) realising property in order to make a distribution to one or more secured or preferential creditors.

(2) Subject to sub-paragraph (4), the administrator of a company must perform his functions in the interests of the company's creditors as a whole.

...

(4) The administrator may perform his functions with the objective specified in sub-paragraph (1)(c) only if –

(a) he thinks that it is not reasonably practicable to achieve either of the objectives specified in sub-paragraph (1)(a) and (b), and

(b) he does not unnecessarily harm the interests of the creditors of the company as a whole.

5. The administrator of a company must perform his functions as quickly and efficiently as is reasonably practicable.”

Issues for Determination

[18] Two issues arise for determination:

(a) Whether the purpose of the administration is best achieved by sale of the property free from the secured interests or whether it is best achieved in another way – (“the options issue.”)

(b) If the purpose of the administration is best achieved by sale of the property free from the secured interests, the order of the securities affected – (“Priorities issue”).

The evidence in respect of the options issue

[19] The joint administrators’ position was set out in the three affidavits filed by Mr Lennon. In his first affidavit he averred that the building is not complete and will require further finance to complete the construction. He averred that the joint administrators are not presently in a position to finance completion of the building. At paragraph 32 of his affidavit he sets out the basis upon which the joint administrators consider it appropriate to pursue the present application. He states:

“The joint administrators consider that the purpose of administration is best met by the sale of the building in its current state of completion. We consider this is likely to achieve a better result for creditors in the alternative (ie liquidation) and in any event such a purpose will realise a better outcome for the secured creditor of the company – the lender.”

[20] He further confirmed that the joint administrators had obtained a valuation of the property but had not released same due to its commercially sensitive nature. He did, however, confirm that based on the valuation advice and in light of the secured debt of circa £8.36m owing to the lender, there is unlikely to be any return for unsecured creditors following the sale of the building and the satisfaction of the lender's secured debt and it was further agreed that the lender's security would not be satisfied in full.

[21] The joint administrators averred that in light of all the circumstances the only option open to them which could best promote the purpose of the administration was to dispose of the property at its open market value as if it were not subject to security.

[22] In the event the building is sold for more than the debt owed to the lender and after payment of administration costs and expenses the administrators stated that they would return to the court for further directions.

[23] When the matter was first listed for hearing on 14 March 2022 Mr Stephen Kearney, one of the bedroom investors, appeared at the hearing and requested an adjournment on the basis the joint administrators had failed to adequately investigate whether there was a potential investor who would complete the building works and then sell the completed building or operate it as a going concern. This application was supported by 22 other bedroom investors who had filed affidavit evidence to this effect.

[24] Mr Dunlop opposed the application on the basis that this was only an inchoate proposal and, in particular stressed that the potential developer had not been identified. He further submitted it would be unlikely such an investor would materialise for a number of stated reasons and submitted that an adjournment would only further delay the administration of the company.

[25] In light of the agreed evidence that the joint administrators' preferred option would lead to no return to the bedroom investors, many of whom had invested their life time savings in this project, and in light of the submissions by the bedroom investors that there may be another available option which would better meet the interests of all the creditors, I adjourned the case to enable the parties to file further evidence to support their submission that there was another viable option whereby the building could be completed and in this way the interests of all the creditors and, in particular, the unsecured creditors could be met.

[26] Prior to the adjourned hearing the court received a document entitled "Expression of interest" from the Martin Property Group which was dated 18 March 2022 which stated as follows:

"18 March 2022 - Re Bedford Hotel, Belfast,
Northern Ireland

To whom it may concern

We, the Martin Property Group, have conducted a feasibility study of the Bedford Hotel. This study included various site visits, a budgetary review and due diligence of the property.

On this basis we would like to formally acknowledge an expression of interest in making a substantial investment in the Bedford Hotel project in return for a majority equity stake in the property and the eventual business.

As part of this investment, the Group intends to complete the renovation of the property and operate the business as a going concern.

We understand that there are a number of investors in the project, including a group of individual investors (“room investors”).

Subject to routine agreement with the existing investors, we will seek to establish an equitable, long term plan that will enable investors to recover part or all of their investment. It is envisaged that the first stage of this plan would be to reach an agreement with Lyell Trading.

This plan is contingent on negotiations with the investors.

Paul G Martin
Group Director on behalf of Martin Property Group”

[27] Mr Lennon filed his second affidavit on 24 March 2022. In this affidavit he set out the joint administrators’ views in respect of the potential options available to them in respect of the property. He stated that there were three possible options, namely:

- (a) A sale of the property “as it is” that is in its present condition and subject to any existing encumbrances (“Option A”);
- (b) Completing the development of the hotel and then selling it (“Option B”); and
- (c) Selling the property free of its secured interests which was the preferred option of the joint administrators (“Option C”).

[28] It was the settled view of the joint administrators that in practice the only realistic option available to them was to sell the property free of its secured interests and that was why they were continuing to seek the relief applied for in the present application.

[29] In relation to option A - sale of the property "as it is" Mr Lennon stated that this was an extremely unlikely scenario. This was because every party who had expressed an interest in purchasing the property to the joint administrators had emphasised the need for clear title, ie unencumbered by any securities and therefore it was his view that it was extremely unlikely that any buyer would be willing to purchase a property subject to secured interests.

[30] In relation to option B, namely completing the hotel, which is the option proposed by the bedroom investors, the joint administrators reiterated that they are presently not in a position to finance or otherwise in a position to complete the construction of the hotel themselves. In addition, the lender, Lyell Trading Limited, has indicated that it will not fund such works.

[31] Mr Lennon further confirmed at paragraph 21 of his affidavit that notwithstanding the adjournment of the case on 14 March 2022 the joint administrators had still not received any investment proposal from any third party to complete the construction of the hotel. Mr Lennon outlined that the idea of a third party investor completing the hotel had first been raised with the administrators by Mr Stephen Kearney in December 2021 but to date no such investment proposal has been received from any third party investor for the joint administrators to consider. He accepted that an expression of interest had been made by the Martin Property Group but noted that they have not made any formal proposal notwithstanding meetings and correspondence between them and the joint administrators.

[32] Mr Lennon then referred to the valuation of the property obtained by the joint administrators. Although the report is not disclosed, he noted that it considers three scenarios and he averred at paragraph 29:

"... the joint administrators consider that it is particularly unlikely that any third party would be willing to invest in and complete the construction of the hotel for the following reasons:

29.1 The joint administrators obtained a valuation of the property at the outset of the administration. A copy of this valuation can be provided to the court if it wishes to have sight of same but it is presently not being released owing to the commercially sensitive nature of such a report and the impact that its disclosure could have on the price that the joint administrators seek to obtain for the hotel. The valuation which the joint administrators have

obtained considers three scenarios – the property being sold in its current state of completion; the property being completed to practical completion and then sold; and the property being completed to practical completion, traded as a hotel and then sold as a going concern. In each of those scenarios, based on:

- (i) The costs and expense of the administration to date and those expected to continue to accrue;
- (ii) The liability of the company to the lender, which as of 10 February 2022 stood at £8,364,390.45 and which is increasing with interest; and
- (iii) The liability of the company to Julie and Peter Foster, it is unlikely that the maximum valuation scenario (ie completion of the hotel and trading as a going concern, would be exceeded). It is therefore unlikely that a surplus would ever be generated for the ordinary unsecured creditors of the company ie the bedroom investors.

29.2 Commercially, therefore, it would appear that any third party would be unable to recover their initial investment in the property. Any investor would have to invest at least £2m without any security unless they persuaded the secured creditors (ie the lender and the Fosters) to postpone their own rights.

29.3 The company has been in administration for almost two years now, no formal investment proposal has been made to the joint administrators during the previous two years. Some expressions of interest have been posed to the joint administrators, but much like Martin Property Group's expression of interest, these were speculative at best."

[33] At the resumed hearing on 6 May 2022 no investment proposal had been presented by any third party investor, and in particular, none had been presented by Martin Property Group. The court nonetheless afforded the bedroom investors a period of seven days to provide the court with any investment proposal that could be obtained from Martin Property Group and the case was relisted for hearing on 20 May 2022. It was adjourned by agreement as Martin Property Group indicated they would file a proposal on 20 May. The case was relisted for hearing on 24 May 2022.

[34] On 20 May 2022 the Martin Property Group sent a without prejudice email to the joint administrators in which they expressed an interest in acquiring the debt of the lender so they could thereby become the first charge lender to the Company. They would then offer the Company a new term loan in order to refinance the debt and end the administration process. It would offer a funding facility to the company to complete the refurbishment of the hotel and thereafter it would enter into an arrangement with a third party to lease and operate the property from the Company as a going concern and in this way the bedroom investors may be repaid through the profits generated from the trading activity. They accepted that they would only pay a percentage of the lender's debt on the basis that even in an open market sale the lender would not recover its debt in full. They finally stated that they wished to discuss the proposal "to work out an acceptable solution for all parties".

[35] At the resumed hearing on 24 May 2022 the joint administrators filed an unsworn affidavit which was then sworn on 25 May 2022. In this they set out their view that the proposal by the Martin Property Group was only a viable option if the lender agreed to sell its debt for the price proposed by Martin Property Group. They further submitted that the proposal by Martin Property Group was really only an expression of interest that was inchoate as it contained a large number of contingencies.

[36] At the court's request Mr Troughton, director of the lender, filed an affidavit confirming the position of the lender to the proposal by the Martin Property Group. In his affidavit sworn on 31 May 2022 he stated that the proposal had been discussed and unanimously rejected by the Property Investment Committee of the lender's parent company. The main reason it was rejected was because the lender believed that it would only receive the best return in respect of its debt if the property was exposed to the open market.

Evidence of the bedroom investors

[37] Affidavit evidence was filed by 23 bedroom investors prior to the initial hearing. Almost all of the affidavits filed requested an adjournment of the proceedings to enable the administrators to investigate the potential for a third party investor to complete the development of the hotel before then either selling the property on or operating it as a going concern. The bedroom investors averred that an investor firm had expressed substantial interest in making a commercial proposal that would benefit all stakeholders including the individual bedroom investors. They submitted, as this was the only option under which the bedroom investors would see any return on their investment, the court should adjourn the hearing for this option to be fully explored by the joint administrators.

[38] Following the two adjournments of the hearing further affidavits were then filed by Mr Mark Spence and Ms Diane Basterfield.

[39] In their supplemental affidavits Mr Spence and Ms Basterfield indicated their support for the expression of interest and latterly the proposal by the Martin Property Group and Ms Basterfield asked the court to give the Martin Property Group first refusal. Mr Spence's affidavit exhibited a report from Colliers. Thirty-one bedroom investors also emailed the court to indicate support for the Martin Property Group's expression of interest.

[40] Mr Stephen Kearney did not file any further affidavit evidence but at the resumed hearings he submitted that, on the basis of the valuation obtained by the UK Accommodation Group Ltd on 1 April 2021 from Colliers, the build out option was viable and under it all investors, including the bedroom investors, would receive a return on their investment and, in addition, the third party investor would recover a profit. As appears from this valuation and, on the assumption the hotel is complete, fully fitted and ready to trade, the market value of the freehold interest in the property was estimated to be £11.6-£14m on the assumption there was a stabilised level of trade realised.

[41] Ms Basterfield gave evidence to support the proposal of the Martin Property Group. The court further heard moving evidence from Ms McGaughey about her and her family's upset and distress at the prospect of losing their lifetime savings in this investment.

[42] In addition, the court received personal stories by 17 bedroom investors describing the impact the loss of this investment was having on their lives and futures.

Evidence of the lender and Mr and Mrs Foster

[43] Neither Lyell Trading nor Mr and Mrs Foster gave evidence about the options open to the joint administrators save that the lender supported the application brought by the joint administrators.

Evidence in respect of priorities

[44] Mr David Higson on behalf of Lyell Trading Limited, the lender, swore an affidavit on 14 February 2022 and averred that the company entered into a debenture with Lyell Trading Limited on 26 October 2018. This debenture created a fixed and floating charge in favour of the lender over the property. This was registered in the Land Registry on 9 January 2019. The debenture was registered at Companies house via a certificate of registration of charge on 29 January 2018. An additional security document is registered at Companies House in favour of the lender, namely a debenture and guarantee dated 11 October 2019 and registered in Companies house via a Certificate of Registration of Charge on 17 October 2018. Mr Higson confirmed the indebtedness of the company to the lender as of 10 February 2022 was £8.3m approximately.

[45] The Fosters did not file affidavit evidence but, as appears from the evidence of the joint administrators, they obtained a judgment against the company on 8 November 2019 and secured an order charging land which was registered over the folios. The registration of their order charging land post-dated the registration of the charge by the lender.

[46] None of the bedroom investors sought to argue that they have any priority or ranking above the lender.

Consideration

[47] The present application is made pursuant to paragraph 72(1) of Schedule B1 to the 1989 Order. Under this provision the court may, by order, enable the administrators of a company to dispose of property which is subject to a security, as if it were not subject to that security. By paragraph 72(2) such an order may be made only on the application of the administrator and where the court thinks that disposal of the property would be likely to promote the purpose of the administration in respect of the company.

[48] Further, under paragraph 72(4) if an order made under this paragraph relates to more than one security, the application of the proceeds of sale in accordance with paragraph 72(3) is to be in the order of the priorities of the securities.

[49] It was accepted by all the parties that two issues arise for consideration. The first is whether the disposal of the property free of secured interests is the option which is likely to best achieve the purpose of administration. The second issue is the order of priority of the securities affected given that there is more than one security over the property.

Issue One - Options

[50] Under Schedule B1 the duty of the administrator is to perform his duties with the objective of:

- (a) rescuing the company as a going concern, or
- (b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration),
or
- (c) realising property in order to make a distribution to one or more secured or preferential creditors.

[51] Under Schedule B1, paragraph 4(2) the administrator of a company must perform his functions in the interests of the company's creditors as a whole and further at paragraph 4(4) the administrator may perform his functions with the objectives specified in paragraph 4(1)(c) only if:

- (a) He thinks that it is not reasonably practicable to achieve either of the objectives specified in paragraph 4(1)(a) and (b); and
- (b) He does not unnecessarily harm the interests of the creditors of the company as a whole.

[52] Further, under Schedule B1, paragraph 5 the administrator of a company must perform his functions as quickly and efficiently as is reasonably practicable.

[53] In the present case the joint administrators' view is that they can only achieve the third statutory purpose, that is, realising the property in order to make a distribution to one or more secured or preferential creditors.

[54] Consequently, the burden is on the joint administrators to show that it is "not reasonably practical to achieve either rescue of the company as a going concern or achieving a better result for the company's creditors as a whole". The bedroom investors accept that rescuing the company as a going concern is not a viable option. They submit however that the joint administrators can achieve a better result for the company creditors as a whole by sale of the hotel to a third party investor who can complete the building and then either sell it or operate it as a going concern. They submit that the proposal by the Martin Property Group is in the interests of the company's creditors as a whole as under this option all creditors receive a return for their money. In contrast under the joint administrators' proposal the bedroom investors would receive no return on their investment.

[55] Consequently, the court needs to scrutinise whether there is a viable option available which makes it reasonably practicable to achieve a better result for the creditors as a whole than the option proposed by the joint administrators. It is therefore necessary for the court to scrutinise the various options open to the administrators to ascertain whether they are reasonably practicable.

[56] As outlined at paragraph [27] above, it appears from the affidavit evidence of the joint administrators there are three possible options open to them, namely:

- (i) Sell the property as it is ("Option A");
- (ii) To build out the hotel with the benefit of a third party investor ("Option B");
or
- (iii) To sell the property free of the secured interests ("Option C").

[57] All the parties accept that the first option is not a viable option and therefore the main dispute centres on whether option B - selling or building out the hotel with the benefit of a third party funding is a viable option.

[58] On the basis of the affidavit evidence the joint administrators do not have finance to build out the hotel and therefore this option is only viable if there is a third party investor. The court adjourned the proceedings to allow time for this option to be fully investigated. The position as of today's date, over one year after the application was first issued, is that the only proposal which has been made to the joint administrators is the proposal of the Martin Property Group contained in the email dated 20 May 2022.

[59] This proposal is only viable if the lender agrees to be released as the first charge holder. The Martin Property Group have agreed to release the lender by payment of a percentage of its debt. As appears from the affidavit of Mr Troughton the proposal by the Martin Property Group is not acceptable to the lender. Further as appears from the evidence of the joint administrators the proposal is incomplete and is contingent on a number of matters which have not been agreed. Mr Kearney also accepted that the proposal was a "negotiating position" at this stage. Given that the proposal is based on a number of contingencies, one of which is the lender's consent and given that this is not presently forthcoming I consider that option B is not a viable option on the evidence presently available.

[60] In the absence of any confirmed offer by a third party investor and in the absence of agreement from the secured creditors to release their rights in the event of such an offer, the option of investment by a third party investor to build out the hotel cannot realistically be considered further.

[61] This court has afforded time for option B to be explored fully and as a result over one year has now elapsed since the application was issued. In the interim period the debt has grown and the building which is presently unfinished continues to fall into disrepair and has been the subject of burglaries. In these circumstances, there is a risk that the value of the building may be falling. Given that the administrators have a duty to perform their functions as quickly and efficiently as is reasonably practicable the court considers that it should not delay the application any longer. The court is therefore satisfied for the reasons set out that a sale of the property, free of the relevant security interests will promote one or other of the two purposes of administration in respect of the company.

Issue Two - Priorities

[62] The lender, Lyell Trading Limited, holds both a fixed and floating charge. The floating charge was registered against the folios which comprise the property and is the first registered charge over the property.

[63] The Fosters hold an order charging land but this was registered later in time to the charge held by the lender.

[64] The joint administrators recognise that the bedroom investors may enjoy a purchasers' lien.

[65] The basis of such an interest was set out in *Rose v Watson* [1864] 10 HLC 671 by Lord Westbury at p687 as follows:

“When the owner of an estate contracts with a purchaser for the immediate sale of it, the ownership of the estate, is in equity, transferred by that contract. Where the contract undoubtedly is an executory contract, in this sense, namely, that the ownership of the estate is transferred, subject to the payment of the purchase-money, every portion of the purchase-money paid in pursuance of that contract is a part performance and execution of the contract, and, to the extent of the purchase-money so paid, does, in equity, finally transfer to the purchaser of the ownership of a corresponding portion of the estate.”

[66] In cases where only part of the purchase-moneys has been paid Lord Cranworth at p683 stated:

“When, instead of paying the whole of his purchase-money, he pays a part of it, it would seem to follow, as a necessary corollary, that, to the extent which he has paid his purchase-money, to that extent the vendor is a trustee for him; in other words, that he acquires a lien, exactly in the same way as if upon the payment of part of the purchase-money the vendor had executed a mortgage to him of the estate to that extent.”

[67] Consequently, a purchaser’s lien arises as a matter of equity in order to do justice to a purchaser who, without fault, is unable to obtain a conveyance at the legal estate for which he is contracted, in circumstances where the contract is not capable of being performed either because of the default of the vendor or for some other reason.

[68] In this case the company has plainly not been able to uphold its end of the contractual bargain with the investors following its entry into administration. Consequently, I am satisfied on the basis of the authorities that the bedroom investors have a purchaser’s lien.

[69] The status of an equitable lien was addressed by Arnold J in *Eason v Wong* [2017] EWHC 209 where he explained that an equitable lien is an equitable right over real or personal properties to secure the discharge of a debt. It is a form of equitable charge over the subject property.

[70] Both the joint administrators, the lender and Mr and Mrs Foster contend that the lender has first priority followed by the Fosters and the bedroom investors rank

thereafter. This order of priority was not argued against by any of the bedroom investors.

[71] I am satisfied that this is the correct order of priorities. Both the lender and the Fosters have legal charges over the property. Section 40 of the Land Registration Act (Northern Ireland) 1970 provides:

“Save as otherwise provided by this Act or by any other statutory provision and subject to any entry to the contrary contained in the title register, registered burdens affecting the same land . . . shall, if created or arising since the first registration of the land, rank according to the order in which they are entered or deemed to have been entered on the title register and not according to the order in which they are created or arise, and shall rank in priority to any other burden (not being a Schedule 5 burden) affecting the land and created or arising since the first registration of the land.”

[72] I am satisfied that the legal charges rank in priority to the equitable purchasers' liens held by the bedroom investors as an equitable lien is not a Schedule 5 burden. The legal charges rank in order of date of registration. Accordingly the lender's legal charge being first registered ranks prior to the legal charge of the Fosters and the bedroom investors' equitable interests rank thereafter.

[73] I therefore find that the net proceeds of the sale of the building fall to be distributed as follows:

- (a) The costs and expenses of the joint administrators as an expense of the administration;
- (b) In favour of the fixed charge registered against the property held by Lyell Trading Limited; and
- (c) If there is any surplus after (a) and (b), in favour of the order charging land held by Mr and Mrs Foster.

[74] In the event that there are any funds remaining after (a) and (b) the joint administrators should return to the court to seek directions on the issue of priorities between the investors and other unsecured creditors who do not have the benefit of liens.

[75] For all these reasons I accede to the joint administrators' application notwithstanding the opposition of the bedroom investors. The court obviously had immense sympathy for the bedroom investors who stand to lose their entire investment without any return and it noted that in the case of many of the

individual investors the investments made represented their lifetime savings. The court has, it considers, given ample opportunity for attempts to be made to secure the best return for the creditors as a whole. And despite adjourning the matter on three occasions no viable proposal had been made by a third party investor. The court, however, notes the joint administrators' agreement to continue to explore any further proposals made by the Martin Property Group prior to the sale of the property which is in accordance with the duties of the joint administrators.

Court Order

[76] The court makes an order in the terms of the order exhibited.