Neutral Citation Number: [2021] EWHC 1627 (Ch)

No: CR-2015-001250

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

IN THE MATTER OF MICROCREDIT LIMITED (COMPANY NUMBER 06677980)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Date: 2 June 2021

Before:

Deputy ICC Judge Baister

- -

Between:

MICROCREDIT LTD — **Applicant**

- and -

ANDREW ROSLER — **Respondent**

Reuben Comiskey & Hartley Foster (instructed by **South Bank Legal Ltd**) for the **Applicant**
Christopher Brockman (instructed by **Freeths LLP**) for the **Respondent**
Hearing dates: 19 & 20 May 2021

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This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII. The deemed date and time for hand down is 18 June 2021 at 2 pm.

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Deputy ICC Judge Baister:

Background

1. Microcredit Limited was incorporated in England and Wales on 20 August 2008. It is not the same as the applicant company which has the same name but is incorporated in Malta. Following the lead taken by counsel in their skeleton arguments I shall call the English company "the Company" and the Malta company "Malta."

2. Until 31 October 2014 the Company's sole shareholder was Kristjan Valdmann who was also a director until 30 June 2012. His brother, Andres Valdmann, was a director until 27 February 2015. On 31 October 2014 Kristjan Valdmann sold his shares in the Company to Anatoly Maximov who was appointed as a director on 4 December 2014.

3. The Company was a payday lender. Its back-office functions were provided by two Estonian companies, Figone OÜ and MC Office OÜ. Figone and MC Office were and still are both owned and controlled by Andres Valdmann (to whom I will now refer as Mr Valdmann). Figone provided its services pursuant to a contract dated 10 September 2008; MC Office provided its services pursuant to a contract dated 20 September 2013.

4. In March 2014 the FCA began an investigation into the Company. By September 2014 it appeared likely that it would revoke the Company's licence to carry on regulated activities. The Company already had an arrangement with a company called Opos Limited for the collection of overdue loans. Mr Valdmann says that the withdrawal of its licence was likely to make its loans irrecoverable, so the Company transferred part of its loan book to Kapama Limited, a company under common control with Opos Limited, and the remaining loans were written off. On 10 December 2014 the Company applied for permission to have its licence to carry on regulated activities withdrawn. Thereafter, on 15 December 2014, the Company assigned its rights under the Kapama agreement to Malta.

5. In October 2012 the Company appointed iTax UK Business Solutions Ltd to advise it on disputes with HMRC concerning corporation tax. On 14 April 2015 iTax notified HMRC that it was likely that the Company would make losses during its last year of trading. Those losses were then thought likely to be around £24m. The Company accordingly claimed terminal loss relief ("TLR").

6. Notwithstanding the TLR claim, on 21 April 2015 HMRC presented a petition to wind up the Company based on indebtedness of some £2m said to be due in respect of corporation tax, and a winding up order was made on 15 June 2015. The respondent was appointed as liquidator by the Secretary of State on 20 April 2016. He instructed iTax as his agent to pursue the TLR claim which resulted in HMRC withdrawing their claim against the company and making a payment to the Company of just under £110,000.

7. The administration of the liquidation started with Mr Valdmann's completion of the official receiver's questionnaire on 21 July 2015 (a task to which he appears to have taken a minimalist approach) and the provision of the limited books and records he says he had. He says that he handed the rest to Mr Maximov when he took over as director.

Since the appointment of the liquidator there have been arguments about Mr Valdmann's failure to produce proper books and records to which the liquidator believes he must have access, there has been a challenge to the liquidator's remuneration and there have been disputes about the liquidator's approach to the Company's creditors and the proofs they have submitted. The last of these areas of disagreement has become important because the liquidator has issued an application against Malta, Mr Valdmann and his brother challenging a number of transactions entered into by the Company by which it transferred its right to receive income from its loan book to Kapama and the benefit of realisations arising under that agreement to Malta for £50,000, seeking, variously, repayment of an overdrawn loan account, alleging breach of trust and knowing receipt, and relief under ss 239 and 423 Insolvency Act 1986. In aid of his application the liquidator sought and obtained from Penelope Reed QC, sitting as a High Court judge, a freezing injunction which was granted in the face of opposition on the basis that the liquidator had not made full and frank disclosure to the court.

8. Other facts and dates relevant to the background appear from the short chronology appended to this judgment. It does not purport to be comprehensive. Nor do I intend in this judgment to cover all the many facts and matters to which I was taken in the course of submissions, since, in my view, the issue at the heart of this application can be decided on a simple basis.

9. I have mentioned just some of the applications that have been brought so far in broad terms to give the context in which I have heard the application I have to decide. A note of them prepared and agreed by the solicitors to the parties is appended to this judgment with my thanks.

The application

10. The application (as amended) seeks an order directing the respondent to initiate a decision-making procedure for the purpose of considering removing him as liquidator of the Company, alternatively an order removing him as liquidator of the Company. It is supported by witness statements of the applicant's solicitor, Michael Czechyra, and Mr Valdmann himself as the sole director and shareholder of the applicant, while the liquidator relies on a number of witness statements made by him. The parties have not sought cross-examination, so I have heard no oral testimony. There is, however, a considerable amount of documentary evidence to which I have been taken, although I do not intend to refer to it in anything like the detail with which it was examined in the course of the hearing.

11. In his skeleton argument Mr Comiskey says that the application is not made to stymie the proceedings brought against Malta by the liquidator but by Malta *qua* creditor, motivated by concern that the liquidator may be misapplying assets of the Company by embarking on unnecessary investigations. I take that with a pinch of salt. That said, this is a liquidation that has taken some odd turns, and it is not difficult to understand why Malta might have real concerns about the way the liquidator has acted in relation to creditor claims and a possible appeal against HMRC's claim in the liquidation.

12. Mr Comiskey says in paragraph 5 of his skeleton argument,

> "A key area of dispute between the parties relates to the identity and value of the Company's creditors: the Applicant claims to be the holder of all, or substantially all, of the valid creditor claims against the Company, as well as being its sole shareholder. The Liquidator claims to have rejected the vast majority (£2.94m worth) of the Applicant's claims. By contrast the Liquidator claims to be bound to accept a proof of debt recently submitted by HMRC, in the sum of £2,595,337.32, in relation to which the Applicant says there are good grounds for an appeal."

This indeed is a key issue. It is important for a number of reasons. First, it is important in itself, because the role of a liquidator is to realise the assets under his control and make a distribution to the creditors in accordance with the statutory priorities. For that purpose he invites them to prove and must adjudicate on their claims. Secondly, it has implications for what he might do or not do in order to fulfil his obligations to the creditors. If the creditors decide it is not in their best interests for the liquidator to bring or continue proceedings or embark on certain courses of investigation, that is something a prudent liquidator should take into account. He would also have to consider whether it was appropriate to bring proceedings against a party who was also a creditor if any recovery would largely result in accounting to the very creditor he has sued. In this case, he has to decide whether it is in the interests of the creditors to appeal assessments raised by HMRC. He has formed the view that he should not appeal; Malta thinks he should. The decision is important, because HMRC are a substantial creditor. Rejection of their claim would potentially increase the dividend to other creditors and, arguably, affect the conduct of the substantive application against the Malta parties.

13. I turn first, then, to the creditors and the contentions of the parties about their claims and the liquidator's treatment of them.

The creditors and their claims

14. When Mr Valdmann completed the official receiver's questionnaire on 28 July 2015 he showed the Company's only liability as £1.4m to HMRC. He also showed the TLR claim as an asset. In fact, various creditors have claimed in the liquidation and continue to do so. Many are members of the public who have lost out as a result of the way the Company ran its business, but their claims are relatively small, so although no doubt significant to them, they are not significant for the purposes of this application. I shall deal only with the claims that are.

15. HMRC are at present creditors in the sum of £2.5m odd. They have proved, and my understanding is that their proofs have been accepted, as they must be, because they are based on assessments.

16. On 2 October 2015 Mr Valdmann's solicitors wrote to the official receiver enclosing invoices from Figone and MC Office explaining that they were omitted from the questionnaire in error as Mr Valdmann thought he only had to include claims of "third party creditors" (an interesting phrase, although nothing hangs on it for present purposes). Figone later put in a proof of debt for £1.3m, and MC Office one for £1.64m. The liquidator's first report to creditors of 11 January 2017 showed both as creditors alongside HMRC for £2.28m. The liquidator has adopted a curious approach to the

Figone and MC Office claims. At various times he seems to have accepted them, then said he cannot adjudicate on them, then, finally, rejected them.

17. iTax has proved in the liquidation for what is said to be uninvoiced time cost of £1,980. That sum is not significant, but iTax's status as a creditor has become contentious because iTax's proof enabled the liquidator to secure a positive vote for his remuneration in circumstances that the Malta creditors call into question.

18. Malta is now a creditor. In March 2020 it gave the liquidator notice that MC Office and Figone had each assigned to it their claims in the liquidation. The status of those two creditors is up in the air, but Malta has also taken assignments of the undisputed claims of four creditors, Robert Sutton, Thomas Veli, Tara Daglish and Alexander McLeod, as a result of which it claims to be the sole owner of all admitted claims in the liquidation, with the exception of those of HMRC and iTax, the latter subject to challenge; it also holds all the shares in the Company.

19. Malta thus has standing to make this application.

The merits of the proposed tax appeal

20. The principal bone of contention between the parties is that the applicant believes that there is good reason to appeal HMRC's assessments, on the basis of which they are creditors in the liquidation, while the liquidator believes there is not. Malta complains that the liquidator has set his face against the possibility of an appeal because it suits his purposes to leave the HMRC debts unchallenged: he can prosecute the claim against the Malta parties without hindrance and generate fees for his own benefit. That, Malta says, warrants removing him from office. The applicant, on the other hand, has a real interest in seeing off HMRC as a creditor. It does not put the matter as bluntly as I shall, but if HMRC go away Malta will be the only significant remaining creditor and will be able to say to the liquidator that there is little or no purpose in his pursuing the claim against the Malta parties (said to be worth £13m) when Malta can pay off the few remaining creditors and, I imagine, withdraw its own claims; even if I am wrong in my presumptions, at the very least the quantum of the substantive claim would be affected since it would be odd if the liquidator on behalf of the Company could legitimately recover from the Malta parties more than was necessary to pay the creditors (other than HMRC if there is a successful appeal) and the proper costs and expenses of the liquidation.

21. Mr Foster addressed me on the reasons in support of an appeal and did so in some detail and with considerable cogency, walking me through the unfamiliar territory of the Taxes Management Act 1970 and the Finance Act 1998 as well as taking me to authorities going to the discretion to extend time for an appeal against assessments and the significance of the term "discovery" for the ability of HMRC to raise what is called a "discovery assessment" (see para 41 Sch 18 Finance Act 1998). His submissions largely followed what I take to be his contribution to his and Mr Comiskey's joint skeleton argument under the heading "The grounds for appealing the Assessments raised by HMRC" (paras 65-83). For the purposes of this application I do not intend to go through them in detail because I must avoid anything that might approach a mini-trial. I thus summarise Mr Foster's submissions, no doubt primitively, as follows:

> (a) The assessments appear to have had the effect of "reversing" the successful TLR claim and claiming tax due on the basis of estimated profits for the 2013 and 2014 accounting periods and round figures.
>
> (b) To challenge the assessments would have required bringing an appeal, the time for which has now been allowed to expire.
>
> (c) Time may, however, be extended: *Commissioners for HMRC v McCarthy & Stone Developments Ltd* [2004] UKUT 0196 (TCC), the burden of satisfying the tribunal that there is a good reason to do so resting on the party seeking the extension.
>
> (d) The existing liquidator would not be able to show a good reason; there is, however, a prospect of a new liquidator being able to do so even though the delay is significant.
>
> (e) The appeal would be largely procedural. Two conditions need to be satisfied for valid discovery assessments to have been raised: (i) in relation to each assessment, it must have newly appeared to the HMRC officer concerned, Mr Mee, acting honestly and reasonably, that there was an insufficiency of tax; and (ii) that insufficiency of tax must have arisen by reason of deliberate conduct by the Company, as regards the assessments for the accounting periods 31 December 2011 to 31 December 2013; and/or it must have arisen by reason of deliberate or careless conduct by the Company as regards the assessment for the accounting period ended 31 December 2014.
>
> (f) In the absence of any explanation as to the basis on which Mr Mee, acting honestly and reasonably, could have concluded that there was an insufficiency of tax in the precise sum of £500,000 the assessments should not have been raised; nor can it be demonstrated that such insufficiency could have been said to have arisen as a result of deliberate (i.e. fraudulent) or careless conduct.

I have no doubt that the sophistication of the points made has been lost in that brief summary, but in my view it is enough to show that the applicant's contention that an appeal is more than fanciful can be made good on a *prima facie* basis.

22. Mr Brockman's answer comes in three parts. First, he says that Mr Valdmann's lack of co-operation in withholding information and documents, to which he and/or companies under his control plainly has had continued access after his handing over the reins of the company to Mr Maximov, makes it unrealistic for his client to embark on a tax appeal. He took considerable time taking me through instances of the liquidator or his solicitors asking for documents and coming up against a brick wall. Without making any finding of fact, I shall proceed for present purposes on the assumption that Mr Valdmann has been less than helpful in that regard because there is evidence of that, even if, as Mr Comiskey points out, the liquidator overstates the position and has not been as precise or as quick off the mark as he might have been in asking for what he

now claims to need. His second point is that the funds available in the estate have been depleted by the many applications made in the liquidation so the liquidator could not now fund an appeal even if he thought one were possible. Finally, he has recently had counsel's advice that the prospects of successfully appealing the assessments are insufficient to warrant doing so. Mr Comiskey objected to the advice being adduced as evidence because it was out of time, so I have not seen it (I decided not to read it, even *de bene esse*), and I think he was right to do so: it was not available by the time Mr Brockman prepared his skeleton argument, which demonstrates that it has been taken very late in the day. Mr Foster, in reply, made the point that since the appeal would be mounted largely on the procedural basis outlined above, additional documents would not be required. Mr Comiskey said that if funds were not available Mr Valdmann would cover the costs. This is an offer that has only just been made.

23. There is evidence that Mr Valdmann has documents that would assist the liquidator. It is plain, for example, as Mr Brockman says, that he had at least some well after the time he claims to have handed everything to Mr Maximov; and he must once have had back-ups of many documents relevant to the Company at Figone and/or MC Office because they did the back office work for the Company which only maintained a virtual office in the UK. Furthermore, Mr Valdmann continued to use the Company's email address well after his resignation: see, for example, his message of 4 March 2016 at page 116 of the second supplementary bundle. In short, his involvement with the Company continued after the handover and after liquidation. I should set out Mr Valdmann's account of the circumstances in which he says he parted with the Company's books and records given in a witness statement of 19 March 2021:

> "[I]f 'physical accounting records' refers to hard copies, then there was little by way of hard copy records. Records were kept electronically. Some physical records were handed over to Mr Maximov by myself, such as invoices, agreements and accounts in paper form (as set out in the Addendum to the SPA). This has already been explained by me in my earlier witness statements dated 10 November 2020 and the February Statement. They were handed over to Mr Maximov in Moscow during a meeting that took place in a hotel near Red Square (I do not recall the hotel name), at the same time as all the electronic records, handed over on memory sticks, which included any user names and passwords which were required to access any electronic records (as confirmed in the Addendum to the SPA and my previous statements), As stated previously, this occurred at some point in October 2014; given the passage of time I am unable to recall the exact date but I note that the Addendum signed by Mr Maximov, which confirmed what he had received, is dated 1 December 2014."

Letters from the liquidator to Mr Maximov remain unanswered.

24. Whilst I am sceptical about Mr Valdmann's evidence, I decline to make any finding, because there is an outstanding application under s. 235 Insolvency Act, and I must not pre-empt the judgment dealing with that. But I do not need to, for I am prepared to proceed on the assumption that Mr Foster is right that the lack of documents need not stand in the way of an appeal; and even if they do, if Mr Valdmann is prepared to meet

the costs, it is not money in the liquidation estate that will be wasted if Mr Foster turns out to be wrong.

25. In those circumstances I do not think that for the purpose of dealing with this application I need to say more than that I accept that each side has tenable and *bona fide* reasons to believe that an appeal will succeed or fail, as the case may be. For reasons to which I shall come, I do not believe that that is as important to the disposal of this application as it may once have seemed; it is certainly not decisive. For reasons I canvassed in the course of the hearing I think the possibility of an appeal, and perhaps an actual appeal, can be accommodated without removing the present liquidator. I do, however, recognise that the present liquidator cannot judge objectively whether an appeal should be made: it was he who set off the course of action that resulted in the assessments, which might itself give rise to embarrassment; he has admitted HMRC as creditors, and, according to Mr Foster, he would not be able to show a good reason for a late appeal: only a newly appointed liquidator could do that.

The liquidator's approach to creditors' claims

26. There is another complaint against the liquidator about the approach he has taken to the claims of creditors. Mr Comiskey submits that he has not been even handed: he has stirred up iTax and HMRC, encouraging them to prove, whilst taking a different, sceptical and inconsistent approach to the claims of Figone and MC Office. Even if the evidence relied on may not amount to actual bias, there is an appearance of bias that makes it undesirable for him to remain in office.

27. As we have already seen, iTax has claimed as a creditor for uninvoiced time cost said to be due in respect of work undertaken before the Company was wound up. Malta disputes that. Figone and MC Office have pointed out that iTax had always been paid up front (see their solicitors' letter of 5 July 2019), and that is borne out by an email of 30 June 2015 from Mr Kelly confirming to Mr Valdmann that iTax was able to undertake further work which could be paid for "out of the funds we already hold from your fee on account." I make no finding, because the status of iTax as a creditor is the subject matter of another application. I simply note the implication of what iTax was saying shortly after the winding up order was made.

28. What is my concern in this application is the liquidator's approach to iTax and its claim. On 31 January 2017 Karly Hughes on behalf of the liquidator emailed Mr Kelly of iTax to ask if he could review a proposed report to creditors and confirm whether he would be submitting a proof of debt and proxy. As Mr Comiskey notes, iTax had not previously been included in the list of creditors. On 2 February 2017 Mr Kelly replied that he did not consider that iTax was a creditor (an email which Mr Comiskey says was originally withheld from his clients, even though the liquidator had been ordered to disclose it). It appears that the liquidator himself then spoke to Mr Kelly, because Ms Hughes refers to an "earlier telephone conversation" in an email to him of 8 February 2017 inviting him to complete and return a proxy and a proof of debt, which Mr Kelly did by email of the same day. The impression one gets from this brief exchange is indeed the one Mr Comiskey seeks to give, namely that the liquidator encouraged a claim to be made by iTax for his own purpose: to obtain a fees resolution that would otherwise not have been passed.

29. The applicant makes a similar complaint as regards the liquidator's approach to HMRC.

30. As we have seen, after the successful TLR claim, which the liquidator instructed iTax to make, HMRC made a repayment to the Company and withdrew their claim to be creditors. They changed their position as a result of the liquidator's inviting them to reconsider it.

31. On 9 March 2020 the liquidator contacted Mr Stuart Mee of HMRC. Mr Mee's attendance note records that the liquidator wanted "HMRC to review the terminal loss claim to see if it can be reinstated," because "If this can be done then it will give him a reason to go back to Court and HMRC may well end up with some money." Time, it seems, was of the essence because the liquidation had been open for five years (which I take to mean the liquidator had in mind a possible six year limitation period). I was taken in detail to the ensuing correspondence from 24 March 2020 which culminated in HMRC's doing just what they were invited to do, in spite of initial reservations on the part of Mr Mee and an unidentified internal HMRC accountant about going along with the suggestion. On 19 August 2020 Mr Mee capitulated in the face of the liquidator's persistence (or he saw the light, depending on your point of view):

> "At some point in time I have to draw a conclusion based on the balance of probabilities, and I believe now is that time. As a result, it is my view that corporation tax assessments on all the company's profits need to be put in place,"

which is exactly what happened. I pause here to remind myself that a large part of Mr Foster's submissions went to the inadequacy of the basis of the discovery leading to the raising of the assessments or part of them.

32. Mr Comiskey says that, as in the circumstances that impelled iTax to prove, here too the liquidator went too far in persuading HMRC to reinstate a claim in the liquidation and doing so to give heft to the need to bring the application against the Malta parties that is now before the court. The liquidator, he says, was motivated by a desire to earn fees as much as, or rather than, by regard to the interests of the general body of creditors.

33. Mr Brockman answers that suggestion in two ways. He points out that the liquidator was responsible for the TLR claim which was made on his behalf. If it later came to his attention that it was made on a false basis, i.e. on the basis of losses that he came to believe were not real but fraudulent, his obligation was to draw that to HMRC's attention because his own standing and reputation were on the line. He was simply complying with a legal obligation to put right what he later realised had been wrong. Mr Brockman also relies on what he said were findings of fact made by Penelope Reed QC. The application before her had not been resisted on the merits of the substantive claim: it had been opposed only on the footing that the liquidator had not made full and frank disclosure. He is right. In paragraph 59b the learned deputy judge records, "There has rightly been no attempt to suggest that the Liquidator does not have a good arguable case." Mr Brockman also relies on her finding, on the same facts now being advanced on this application, that "Malta has fallen far short of demonstrating misconduct on the part of the Liquidator, let alone dishonesty." He submits that I am bound by her findings, including her dismissal of any suggestion "that the Liquidator could have bullied or forced HMRC into reinstating its claims as creditor," an idea she found "utterly implausible."

34. I have some misgivings about that, if only because (a) like me, Ms Reed QC did not have the benefit of hearing cross-examination and (b) the nature of the application before her was different. Happily I do not have to resolve any tension that might arise as a result of those misgivings, because on the material before me, I come to the same conclusion as Ms Reed did, so I gratefully adopt her findings. For reasons to which I shall come later, I do not, however, think that I can simply leave matters there, for Mr Comiskey puts his case subtly: he says he does not rely on misconduct or dishonesty, nor yet bias; he relies on the appearance of bias on the part of the liquidator. In support of that he contrasts the liquidator's dealings with the iTax and HMRC claims in the liquidation and those of Figone and MC Office.

35. The liquidator's approach to their claims does trouble me.

36. As we have seen, proofs were sent on behalf of both companies to the official receiver with an explanation why they had been overlooked when Mr Valdmann completed the questionnaire. On 29 May 2019 Ms Hughes asked for documents in support of the proofs. I am unclear what was provided, but by 11 July 2019, in a letter to the solicitors acting for Figone and MC Office that does not refer to any supporting documents, the liquidator through Ms Hughes said that, based on the information he held, he did not consider Figone or MC Office to be creditors, apparently by reason of discrepancies identified in very broad terms. On 16 September 2019 the liquidator told the court that he would adjudicate on all proofs by 24 September. He did not. On 3 October 2019 he wrote to say that he was "minded" to reject Figone's and MC Office's proofs, an unhelpfully ambivalent response to them. This sits uneasily with the "certified list of dividends" dated 8 November 2019 which shows Figone recorded as a creditor for £1.54 m out of creditors amounting to some £2.9m, the implication of which would appear to be that they had been admitted to proof. On 24 April 2020, apparently relying on accountant's working papers, the liquidator rejected Figone's and MC Office's claims. An email to Mr Mee of 15 April 2020 indicates that he had already contemplated doing so.

37. There is an appeal against the rejection of Figone's and MC Office's proofs. Again, I must be careful not to pre-empt the result.

The law

38. We took little time over the law relating to the removal of a liquidator because Mr Comiskey and Mr Brockman were agreed on it. I take the following propositions from Mr Comiskey's skeleton argument amplified, where appropriate, from Mr Brockman's.

39. Section 172(2) Insolvency Act 1986 gives the court the power to remove a liquidator in a compulsory winding up. A similar power exists under s. 108(2) of the Act, although that applies to both compulsory and voluntary liquidations. Although the two sections are differently worded, the underlying principles are the same: see *Re Edennote Ltd* [1996] BCLC 389 at 397i.

40. The scope of s. 108(2) was considered by Millet J in *Re Keypak Homecare Ltd* (1987) 3 BCC. He said, at 564:

> "[T]he words of the statute are very wide and it would be dangerous and wrong for a court to seek to limit or define the

> kind of cause which is required. Circumstances vary widely, and it may be appropriate to remove a liquidator even though nothing can be said against him, either personally or in his conduct of the particular liquidation."

There is no need to show personal misconduct or unfitness (see page 564, col.1): what needs to be shown is that it is, on the whole, desirable that the liquidator should be removed (page 563 col.1).

41. One ground for removal is that the creditors no longer have confidence in the liquidator's ability to realise the assets of the company to their best advantage. The loss of confidence must be reasonable (*Edennote* at 398e-f). The same, Mr Comiskey says, must apply to a liquidator's ability to determine the creditors of the company, since he is under a duty to make sure that only the debts of genuine creditors are paid (*Re Corbenstoke Ltd (No 2)* (1989) 5 BCC 767 at 770G). I agree.

42. An office-holder's getting too closely involved in the matters which he must investigate may also be a ground for removal: *Clydesdale Financial Services Ltd v Smailes* [2009] BCC 810 at [30].

43. The test has been summarised as being due cause "measured by reference to the real, substantial, honest interests of the liquidation, and to the purpose for which the liquidator is appointed:" *Re Buildlead (No.2*) [2005] BCC 138 at 168. The interests of creditors are, however, the most important factor (*Re Adam Eyton Ltd* (1887) ChD 299 at 306).

44. Finally, Mr Brockman draws my attention to a passage from *Re St Georges Property Services (London) Ltd* [2010] EWHC 2538 (Ch). In that case the joint administrators had decided not to make a s. 244 extortionate credit application, but guarantors of the debt successfully applied for their removal and replacement by others who might or might not take such proceedings. The joint administrators appealed against their removal. Allowing the appeal, the Chancellor said (at paragraph 35):

> "It is true that an administrator may be removed without any criticism of him. But if an administrator is unbiased and entitled on the material before him to reach a relevant conclusion his decision should be respected unless and until the court concludes otherwise. That is the effect of the elaborate provisions of Schedule B1. The fact that another mind might reach a different conclusion may be a reason to challenge the administrator's decision but, in my judgment, it cannot be a good reason to remove him altogether."

I attach some importance to the last four words.

Conclusions

45. Given the disputes about the claims of some of the creditors in this liquidation I do not see any purpose in directing a decision-making process. It would resolve nothing.

46. Whilst I have reservations about the enthusiasm with which the liquidator appears to have encouraged claims from both iTax and HMRC, they are not, in my view, sufficiently strong to warrant his removal. I remind myself of the finding of Ms Reed QC that Malta had failed, in her judgment, to demonstrate misconduct, much less dishonesty. I think his approach to the claims of Figone and MC Office has been, at best, confused, but I say no more than that for reasons I have already given. There is, then, in my view, no basis justifying the removal of the liquidator. The appearance of bias, in the circumstances I have outlined and for which I have some understanding, is not, in my view sufficient. In reaching that view I take into account the considerable work that the liquidator must have done in mounting the Malta claim. Even if, as Mr Comiskey contends, the liquidator's desire to earn fees has played a part in his decision to bring that claim, it is plainly for the benefit of the creditors as matters stand. The work he has done would have to be duplicated to at least some extent and to no good purpose if a new liquidator were to be appointed in his place.

47. If it would not be right "to remove him altogether," I do, however, think that someone other than the present liquidator needs to form a dispassionate but definitive view of the prospects of a late appeal against HMRC's assessments and (for the reason advanced by Mr Foster) prosecute such an appeal if that person forms the view that the prospects of success warrant doing so. The present liquidator cannot consider the possibility of an appeal dispassionately in circumstances in which he made the TLR claim and then took steps to reverse it; and for the reasons advanced by Mr Foster he could not make out a case for an extension of time. The appointment of a "conflict liquidator" for those limited purposes will not eat into any remaining assets, given that Mr Valdmann has said through Mr Comiskey that he will meet the costs (which in my view must include providing an adequate indemnity for any adverse costs if an appeal proceeds). There appears to be precedent for my suggested course: see *Clements v Udal* [2002] 2 BCLC 606 and *Re Comet Group Ltd* [2018] EWHC 1378 (Ch), to which I refer for the mechanics of an appointment and not because I suggest that the reasons for my decision reflect those in either of those cases. It may be that the appointment of a conflict liquidator should be not only for the limited purposes I have described but also for a limited time.

48. I will hear from counsel for the parties as to the order I should make to give effect to that purpose, including the manner in which the additional liquidator might be appointed. If the parties fail to agree on a suitable person or mechanism I would propose to ask the president of the IPA or R3 to nominate someone.

Postscript

49. A number of different judges have heard the many applications there have been so far in this liquidation, and, as will be apparent from the foregoing, there is an element of overlap between them. In my view, which I think counsel share, it would be desirable if all future matters were henceforth reserved, as far as possible, to a single judge. If the parties agree I will make a representation to that effect to the chief ICC judge.

Chronology[1]

20 August 2008	Company incorporated
21 April 2011	Company enters into agreements with Pretoria Inc and Chessington Holdings Corp
29 September 2012	iTax engaged by Company to advise on disputes with HMRC re VAT and later corporation tax etc
January 2014	Company enters into collection services agreement with Opos Limited
July-September 2014	Company makes payments to/investments in Perlago Limited
14 August 2014	Company stops accepting new business
24 September 2014	Company enters into account sale agreement with Kapama Limited
31 October 2014	K Valdmann transfers Company share capital to Anatoly Maximov
15 December 2014	Company assigns benefit of the Kapama agreement to Malta for £50,000
19 December 2014	Assignment varied to ensure that Kapama will not be liable for misselling of loans by the Company
31 December 2014	Company ceases trading
23 January 2015	Kapama assignment further varied
27 February 2015	Andres Valdmann resigns as director of the Company
21 April 2015	HMRC presented winding up petition against the Company
15 June 2015	Company wound up by the court
Thereafter	Application to rescind considered but never made
27 July 2015	Preliminary information questionnaire completed by Valdmann
2 October 2015	Mr Valdmann notified OR of claims of Figone and MC Office
20 April 2016	Liquidator appointed
Early 2017	Liquidator instructs iTax to pursue the TLR claim
11 January 2017	Liquidator's first report to creditors
31 January 2017	iTax asked whether it intended to prove
2 February 2017	iTax indicates it does not seek to prove

[1] Nothing in this chronology is to be taken to be a finding of fact; it was prepared for my own use in writing this judgment.

8 February 2017	iTax submits proof
	Liquidator's remuneration fixed
12 May 2017	iTax engaged to act on TLR claim
28 March 2019	Liquidator's third report to creditors
26 April 2019	Decision procedure to revise remuneration
30 April 2019	TLR claim completed, resulting in repayment to the Company of £109,989.81 and no claim from HMRC in the liquidation
24 May 2019	Figone and MC Office proofs sent to liquidator
29 May 2019	Liquidator requests supporting documents
4 June 2019	Liquidator informs Figone and MC Office's solicitor he intended to investigate Kapama and Opus transactions
11 July 2019	Liquidator writes to SBL: he does not consider Figone or MC Office to be creditors
20 August 2019	Liquidator calls for submission of proofs of debt
16 September 2019	Liquidator informs court he will adjudicate on creditor claims by 24 September 2019
24 September 2019	Deadline for adjudicating on proofs: liquidator fails to comply
29 September 2019	Liquidator writes he is unable to adjudicate on Figone and MC Office proofs
3 October 2019	Liquidator says he is "minded" to reject Figone and MC Office proofs
1 November 2019	First request to Mr Valdmann for information
4 November 2019	HMRC submits final proof of debt for £0
8 November 2019	Liquidator prepares and certifies list of dividends/notice to creditors showing creditors totalling £2,945,382.36
28 November 2019	Liquidator tells Figone and MC Office he is unable to adjudicate on their claims
19 February 2020	Report from Cowgills Holloway LLP on TLR claim
27 February 2020	MC Office and Figone assign their claims in the liquidation to Malta
4 March 2020	Malta gives notice it has taken assignment of Figone and MC Office debts
9 March 2020	Liquidator 'phones Stuart Mee of HMRC; further correspondence on 24 March, 2, 3, 15 April, 4, 11 May, 4, 5 June, 29 July, 12, 14 August
April 2020	Liquidator consults Fairhurst (accountants)

24 April 2020,	Liquidator rejects Figone and MC Office proofs
3 April 2020	HMRC write to liquidator re difficulty in reinstating claim
15 April 2020	Email from liquidator seeking to re-establish HMRC as a creditor
24 April 2020	Figone and MC Office claims rejected
4 May 2020	Further contact between liquidator and Mr Mee of HMRC
25 May 2020	Malta purchases entire share capital in the Company
3 June 2020	Malta makes application for order validating the transfer of shares
29 June 2020	Liquidator's letter before action to Malta
10 July 2020	ICCJ Briggs makes validation order re shares
24 July 2020	HMRC accountant's report to Mr Mee
27 July 2020	Mr Mee informs liquidator he needs further documents
5 August 2020	Malta makes remuneration application to challenge fees and expenses
10 August 2019	Malta gives notice of assignment of claims of three creditors
12 August 2020	Mr Mee informs liquidator: "extremely unlikely" HMRC can reverse TLR claim
12 August 2020	Request for requestioned decision
14 August 2020,	Fairhurst report. It is sent to Mr Mee
18/19 August 2020	Liquidator's application for injunction issued
19 August 2020	HMRC's volte face and first proof of debt in the sum of £3,264,405.31
20 August 2020	Freeths reject requisition request
2 October 2020	List of unsecured claims
8 October 2020	HMRC tax assessments raised
23 October 2020	Liquidator's substantive application against Malta and others
3 November 2020	Malta gives notice of assignment of one more debt
10 November 2020	Liquidator asks Mr Valdmann for information
12 November 2020	Disclosure order
25 November 2020	HMRC's second proof: revised to reduced figure of £2,595,337.32
2 March 2021	iTax report
28 & 29 April 2021	Final hearing of application for injunction

Approved Judgment

14 May 2021 Judgment of Penelope Reed QC on injunction

List of applications made in proceedings since 18 July 2019

Date	Applicant(s)	Respondent(s)	Relief sought	Outcome
18.07.19	Figone, MC Office	AR	A direction that iTax UK Business Solutions Ltd should not be admitted to vote as a creditor of Microcredit and that the decision dated 26 April 2019 increasing AR's remuneration is invalid. Amended on 18.05.20 to include an appeal against AR's purported rejection of Figone and MC Office's proofs in the sum of £2,940,00	Final hearing in relation to iTax took place on 13.05.21; awaiting judgment. Appeal against rejection of proofs was stayed generally but now awaits directions
13.12.19	AR	Howard Roth LLP	Disclosure pursuant to s.236/237	Order made by consent
10.01.20	AR	Opos Ltd and Kapama Ltd	Disclosure pursuant to s.236/237	Order made by consent
18.03.20	Malta	Figone, MC Office, AR	That Malta be substituted as applicant in the 18.07.19 application in place of Figone and MC Office	Substitution order made by consent
14.05.20	AR	Barclays Bank plc	Disclosure pursuant to s.236/237	Order made by consent
03.06.20	Malta, AM	AR	That the transfer of Microcredit's shares from AM to Malta be validated; that monies tendered to AR to discharge remaining admitted creditors in the liquidation be used by AR for that purpose	Validation order made at hearing on 10.07.20. Application concerning tendered monies not pursued.
05.08.20	Malta	AR	An order determining liquidator's fees and expenses for period ended 28.03.20	Awaiting directions
18.08.20	AR, Microcredit	Malta	Application for a freezing order	Granted (hearing date 27/28 April 2021)
28.09.20	Malta	AR, Microcredit	Application for specific disclosure	Part successful (hearing date 12.11.20)

23.10.20	AR, Microcredit	Malta, AV, KV	Application for substantive relief seeking circa £13M	Next directions hearing date is 24.06.21
10.11.20	Malta, AV, KV	AR, Microcredit	Application to stay application for substantive relief dated 23.10.20 pending AR's adjudication of HMRC's proof of debt	Next directions hearing date is 24.06.21
11.11.20	AR, Microcredit	AV, Malta	Application for Microcredit books and records	Part heard, next hearing date yet to be fixed
17.12.20	Malta, AV, KV	AR, Microcredit	Application for extension of time for witness statement	Overtaken by EOT application dated 12.01.21
12.01.21	Malta, AV, KV	AR, Microcredit	Application for extension of time for witness statements	Granted on the papers
22.01.21	Malta	AR	Application to requisition decision process for liquidator's removal (amended on 05.03.21 to include application for liquidator's removal)	Hearing on 19 and 20 May 2021; awaiting judgment
28.01.21	Malta	HMRC	Non-party disclosure application	Granted (hearing dated 05.02.21)
19.02.21	Malta, AV, KV	AR, Microcredit	Application for extension of time for witness statements	Granted
24.02.21	AR, Microcredit	Malta, AV, KV	Application for unless order	Heard with Application dated 19.2.21; no order
10.03.21	Malta, AV, KV	AR, Microcredit	Application for specific disclosure	Dismissed with costs
16.03.21	AR, Microcredit	Malta, AV, KV	Application for extension of time for witness statements	Order made by consent

KEY:

"Figone" – Figone OÜ

"MC Office" – MC Office OÜ

"Malta" - Microcredit (Malta) Ltd

"AV" – Andres Valdmann

"KV" - Kristjan Valdmann

Approved Judgment

"AM" – Anatoly Maximov

"AR" – Andrew Rosler as liquidator of Microcredit Limited

"Microcredit" – Microcredit Limited (in liq.)