Neutral citation number: [2021] EWHC 3525 (Ch)

Case Nos: CR-2020-MAN-000002
CR-2020-MAN-000004

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

Manchester Civil Justice Centre
1 Bridge Street West
Manchester
M60 9DJ

Date: Friday, 27 August 2021

IN THE MATTER OF:

TRE CICCIO ALTRINCHAM LIMITED (IN ADMINISTRATION)

AND IN THE MATTER OF:

TRE CICCIO RAMSBOTTOM LIMITED (IN ADMINISTRATION)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

PATRICK ALEXANDER LANNAGAN and CONRAD ALEXANDER PEARSON
(As Joint Administrators)

Applicants

BEFORE:

HIS HONOUR JUDGE HODGE QC
(Sitting as a Judge of the High Court)

Mr Oliver McEntee (instructed by **Knights Plc**, Leeds) on behalf of the applicants
There was no respondent to the applications

Approved Judgment

His Honour Judge Hodge QC:

1. This is my extemporary judgment on two applications involving two related companies in administration. They are: Tre Ciccio Altrincham Limited (Case number CR-2020-MAN-000002) and Tre Ciccio Ramsbottom Limited (Case number CR-2020-MAN-000004). In both cases the applicants are the joint administrators, Mr Patrick Alexander Lannagan and Mr Conrad Alexander Pearson. They were appointed on the application of the directors by an order of His Honour Judge Halliwell, sitting as a judge of the High Court, on 17 January 2020. The administrators' term of office was subsequently extended for a year with the consent of the relevant creditors.

2. The application notices are the same in each case. They are made pursuant to paragraph 79 of Schedule B1 to the Insolvency Act 1986 (as amended). In each case, the administrators seek an order that their appointment as administrators of the relevant companies should cease to have effect.

3. The reason why I am delivering this judgment is that the applicants also seek an order that the court place each company into dissolution. A similar order was made earlier this year, on 15 January 2021, by His Honour Judge Pearce, sitting as a judge of the High Court, in relation to a third related company, Tre Ciccio Bramhall Limited (Case number CR-2020-MAN-000003). On that occasion, Mr Oliver McEntee (of counsel), who appears for the joint administrators in the two cases before me, did not appear for the administrators.

4. The evidence in support of the applications is contained in witness statements from Mr Pearson dated 6 August 2021. Pursuant to paragraph 79(3) of Schedule B1 administrators are required to apply to the court if they have been appointed:

> "… pursuant to an administration order, and (b) the administrator thinks that the purpose of administration has been sufficiently achieved in relation to the company."

   The administrators have formed that view and they therefore seek an order pursuant to paragraph 79(1) providing for their appointment as administrators of each company to cease to have effect.

5. On such an application, under paragraph 79(4), the court may:

> "(a) adjourn the hearing unconditionally or unconditionally; (b) dismiss the application; (c) make an interim order; (d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for)"

6. In the present case, Mr McEntee, following the course adopted by Judge Pearce earlier this year in relation to the third related company, seeks an order dissolving the two companies. The situation here is that the administrators have completed all appropriate investigations in connection with the companies' dealings and affairs, and all of the companies' assets have now been realised. In those circumstances, the administrators

consider that the purpose of administration has been sufficiently achieved in relation to each company.

7. Mr McEntee recognises that the normal process in those circumstances would be to move from administration to dissolution through the administrative procedure under paragraph 84 of Schedule B1. That enables an administrator to move a company from administration to dissolution:

> "… if the administrator of a company thinks that the company has no property which might permit a distribution to its creditors."

In such circumstances, he is to

> "… send a notice to that effect to the registrar of companies."

On receipt of such a notice, the registrar is required to register it; and, on registration of such a notice,

> "… the appointment of an administrator of the company shall cease to have effect.

By paragraph 84 (6), at the end of the period of three months beginning with the date of registration of such a notice, the company is deemed to be dissolved.

8. That is the procedure normally employed in such cases; but Mr McEntee has pointed to the fact that paragraph 84(2) of Schedule B1 enables the court, on the application of the administrator of a company, to disapply the requirement on the administrators to move a company to dissolution under paragraph 84. Mr McEntee has argued that such a power must import a power on the part of the court to order a company to be dissolved; and he submits that that is contemplated within the general power conferred on the court by paragraph 79(4) to make any order that the court thinks appropriate. He points to authorities which clearly establish that the court has the power to make a winding-up order under paragraph 79(4). He submits that if a winding-up order can be made under paragraph 79(4), then the court should be able to order a dissolution. He submits that it is unclear how else paragraph 84(2) could be given effect. An administrator would have no reason to seek to be dispensed from the requirement under paragraph 84(1) unless they were to seek to dissolve the company.

9. For reasons that I explained to Mr McEntee, and which he (I think) acknowledged, I cannot accept that line of argument. The provisions of paragraphs 84(1) and (2) seem to me to operate in this way: Once the administrator has reached a conclusion that the company has no property which might permit a distribution to its creditors, then he has no discretion to do anything other than to proceed to a dissolution. Only the court can determine that, in those circumstances, the administration should continue; but there may be circumstances in which it is appropriate for the administrators to continue in office, notwithstanding that there are no assets of the company available for distribution to creditors. One such situation, envisaged in the commentary at ***Sealy and Milman***, is where there are circumstances suggesting misconduct on the part of those involved in the company's affairs which require investigation by the administrators. In those circumstances, they may come along to the court to ask for it to disapply the requirement to move the company to dissolution. In my judgment, that is the underlying rationale of paragraph 84(2).

10. I acknowledge the width of paragraph 79(4); but, in my judgment, the court can only make an order within its jurisdiction. I have looked at the provisions of Part 31 of the Companies Act, relating both to dissolution and to restoration to the register, and I can find no power conferred on the court to order a company to be dissolved. Indeed, it seems to me that the provisions of Chapter 3 of Part 31, relating to restoration to the register, assume that there is no jurisdiction on the part of the court, as distinct from the registrar, to proceed to a company's dissolution.

11. There are provisions under section 1003 for voluntary striking off; but by section 1005 (1)(c) of the Companies Act 2006, no application for voluntary striking off is to be made at a time when the company is in administration. As regards restoration to the register under Chapter 3, administrative restoration under section 1024 is only available where strike off has been effected by the registrar under sections 1000 or 1001. Restoration of a company to the register by court order under section 1029 is available only in the circumstances specified in section 1029 (1): a company can be restored to the register after it has been dissolved after winding up, or after the company has been deemed to be dissolved under paragraph 84(6) of Schedule B1, or after the company has been struck off by the registrar, either because the company is defunct or because the company has sought to be struck off voluntarily.

12. There is, however, no general power to restore a company to the register after it has been dissolved by order of the court. That suggests to me that there is no power in the court to dissolve a company, and that is reinforced by the absence of such an express power in the Companies Act 2006. I do not consider that the width of the power conferred by paragraph 79(4) to make any order the court thinks appropriate can extend to an order for dissolution, which the court otherwise has no power to make, at least in the absence of express reference to any dissolution being available under paragraph 79(4). As I have said, that would not fit with the requirements of the statutory provisions for restoration to the register under Chapter 3 of Part 31.

13. For those reasons, I consider that the court has no power, on an application under paragraph 79 to bring an administration to an end, to order the company to be dissolved forthwith. It follows that I consider that paragraph 3 of the order that was made by Judge Pearce in relation to the Bramhall company on 15 January 2021 was made in excess of the powers conferred on the court. In my judgment, the court has no power to order that a company is dissolved forthwith pursuant to paragraph 79(4) of Schedule B1 to the 1986 Act.

14. In order to clarify that matter for the future, I propose to direct that a transcript of this judgment is obtained as an expense of the administration of the two companies. I will not, for those reasons, include within my order any provision that either company is to be dissolved. What I had proposed to do was to order that the applicants' appointment as joint administrators of each company should be terminated with immediate effect pursuant to paragraph 79(3) of Schedule B1 to the Insolvency Act. I had proposed ordering that the applicants should be discharged from liability, pursuant to paragraph 98(1), with effect from a date 28 days from the date of this order. I will, of course, order that the costs of this application are to be payable as an expense of the administration in the usual way.

15. However, it has occurred to me that that would leave the company in a position where it would then revert to the control of the directors, even though it is clearly insolvent.

I wonder whether, in those circumstances, it might be preferable for me to make another order on this application, pursuant to paragraph 79(4), simply directing that the joint administrators move the company from administration to dissolution in accordance with the provisions of paragraph 84; in which event I need do nothing more than make a direction to that effect and, at the same time, make an order discharging the joint administrators from liability 28 days after they have filed their notices pursuant to paragraph 84 of the Act.

(After further representations:)

16. I will therefore make no order under paragraph 79 bringing the administration to an end. What I will do instead is simply to make an order directing that the administrators are to move each company to dissolution under paragraph 84 and give them their discharge from liability 28 days after the filing of that notice with the registrar of companies.

(After further discussions:)

17. Mr McEntee, I will invite you to lodge orders with the court in relation to each company along those lines. Those orders should also provide for the costs of the application in each case to be an expense of the relevant administration; and to direct that the administrators are to obtain a transcript of this judgment as an expense of each administration.
