Neutral Citation Number: [2021] EWHC 96 (Ch)

BR-2013-001594

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
IN BANKRUPTCY
RE: JAGDEV SINGH WASU
AND RE: THE INSOLVENCY ACT 1986

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

Date: 20 January 2021

Before :

ICC JUDGE PRENTIS

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Between :

DARREN EDWARDS **(Trustee in Bankruptcy of Jagdev Singh Wasu)**	**Applicant**
- and -	
(3) AURORA LEASING LIMITED **(6) HOWARD DE WALDEN ESTATES LIMITED**	**Third and Sixth Respondents**

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Ian Tucker (instructed by **Mills & Reeve LLP**) for the **Applicant**
Tony Beswetherick (instructed by **Sherrards Solicitors LLP**) for the **Third Respondent** and
(instructed by **Charles Russell Speechlys LLP**) for the **Sixth Respondent**

Hearing date: 20 November 2020

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JUDGMENT

ICC JUDGE PRENTIS:

The bankruptcy and this application

1. Jagdev Singh Wasu (the "Bankrupt") qualified as a dentist in November 2003, practising until an order of the General Dental Council of 28 March 2013 erasing his name from the Register of Dentists. His appeal against that order was dismissed by Haddon-Cave J on 3 December 2013.

2. On 23 March 2013 HMRC presented the petition on which he was bankrupted on 18 October 2013, founded on a statutory demand personally served on 4 December 2012 (the "Petition"). Darren Edwards (the "Trustee") was appointed his trustee in bankruptcy with effect from 24 December 2013; on that date the estate vested under section 306 of the *Insolvency Act 1986* (the "Act"). The Bankrupt remains undischarged pursuant to the order of Chief Registrar Baister of 2 February 2015, not yet having complied with the obligations imposed on him by the Act.

3. Shortly before the expiry of a potential limitation period, on 4 October 2019 the Trustee issued this application under (materially) section 284 of the Act (the "Application"). There were ten independent Respondents, the majority of whom have settled. This is the determination of the Application against the third and sixth Respondents, Aurora Leasing Limited ("Aurora") and Howard de Walden Estates Limited ("de Walden"). The Trustee has been represented by Mr Tucker, and the two Respondents by Mr Beswetherick. Each is to be commended for their vigorous and thoughtful argument in a case which (aside from one minor issue) now centres on just one word in section 284(4)(a), "value".

Aurora: facts

4. As described in the statement of its director, Anthony Gerson, Aurora provides equipment leasing services: it purchases from third parties equipment which is specified by the customer to whom it is then leased.

5. On 17 March 2013 a broker, Wayne Evans of Joefizz Asset Finance Limited ("Joefizz"), emailed Mr Gerson a proposal to finance the acquisition of dental equipment from Hague Dental Supplies ("Hague") (the "Equipment"). The proposed client was identified as Wasu Medical Centre (the "Partnership"), and the quoted cost of the Equipment was £233,100 plus VAT. In his accompanying assessment Mr Evans described the proposition as being "strong new business": the Partnership ran a "very successful" doctor's surgery in Harrow, and now "Moving into Dental too and son will be managing the operations. His CV is enclosed, which demonstrates very clearly his business acumen". The business was to be run "from premises they own outright near Harley St".

6. The Bankrupt was not a member of the Partnership, which was between his parents, Dr Paramjit Singh Wasu ("Dr Singh Wasu") and Harmander Kaur Wasu. Both were in the end bankrupted by Aurora for non-payment of obligations under the ensuing lease. Aurora's petition against the Bankrupt as guarantor was pre-empted by HMRC's.

7. On 16 January 2019 Dr Singh Wasu made a witness statement in support of a stay of his bankruptcy, in which he provided a little background: "Jagdev

wished to establish a dental practice in Weymouth Street… As well as obtaining premises, it was necessary to obtain dental equipment. It was proposed that the dental practice be operated by a company", which he identifies as Weymouth Medical Limited, incorporated on 19 June 2014 and of which Dr Singh Wasu was director and sole shareholder. The date of incorporation leads one to think that the last part of this evidence cannot be right, given the date of Haddon-Cave J's order and the dealings with the Equipment I will describe below.

8. On 22 March 2013 Aurora made an offer to the Partnership through Joefizz. Backed by guarantees from the Bankrupt and his parents, the Equipment would be leased over 36 months, with an initial rental fee of £23,310 plus VAT followed by monthly rentals in advance, the "Initial rental and arrangement fee to be paid and cleared prior to activation of lease agreement". This offer was accepted by Dr Singh Wasu on behalf of the Partnership on 26 March 2013, which was conveyed to Aurora by Mr Evans on 2 April together with a £360 cheque, drawn on the Partnership, for the arrangement fee. The requisite deeds of guarantee were entered into on 19 April 2013, and it was probably around the same time that the Partnership executed the lease agreement.

9. There followed a delay, which Mr Gerson says did not trouble him as it was not unusual in Aurora's business, until on 26 July 2013 the Bankrupt wrote a cheque on his account for the initial rental of £27,972, which Mr Evans passed to Aurora; it was banked on 9 August 2013, and cleared on 14 August 2013. It is this payment which is the basis of the Trustee's application against Aurora.

10. Until receipt and clearance of the initial rental, it is Mr Gerson's unsurprising evidence that Aurora would neither purchase the Equipment, nor itself execute the lease. It executed the lease on 16 August (the "Equipment Lease"), and on 19 August 2013 paid Hague £279,720 for the Equipment. Aurora had no knowledge of the Petition at this point, nor until 30 May 2014.

11. The Partnership defaulted on the monthly rental payments under the Lease almost immediately. By November 2013 Aurora had instructed debt collectors, and on 23 January 2014 obtained default judgment against the Partnership for some of the arrears; the same day, it terminated the Equipment Lease. The Equipment was ultimately sold back to Hague for only £34,799.

de Walden: facts

12. In his assessment for Aurora, Mr Evans wrongly described Dr Singh Wasu and his wife as owning outright a property near Harley Street from which the dental business would run. As specified in the Equipment Lease, the Equipment was to be installed at 29 Weymouth Street, London W1 (the "Property"). This was let by de Walden to Wasu Property Limited ("WPL") under a lease (the "Property Lease") entered into on 7 November 2012, granting a 10-year term from 26 October 2012 with a rent-free first six months followed by quarterly payments, commencing with £50,199 due on 29 April 2013. WPL had been incorporated on 23 May 2012, on which date the Bankrupt and his parents were appointed directors together with a Ranjit Singh Wasu. 34% of the shares were held by the Bankrupt, the remainder divided equally between his parents. The Bankrupt apparently resigned as a

director on 24 May 2013, although this was not notified to Companies House until 7 January 2014. According to Paul Manktelow of de Walden, WPL entered possession of the Property on 7 November 2012 and de Walden re-took possession on 8 January 2015, by when WPL owed around £110,000. WPL was dissolved, without an intervening insolvency event, on 26 June 2016.

13. The Trustee seeks £81,006 from de Walden consisting of three payments, each made before de Walden was aware of the Petition.

14. On 19 July 2013 £30,807 was debited from the Bankrupt's account on clearance of a cheque drawn in favour of a partnership called Alexander Reece Thomson ("ART"). ART acted as an agent for WPL in negotiating with de Walden, and is the second Respondent to the Application (although not in respect of this cheque). On 25 July 2013 it made a bank transfer to de Walden of the same amount, which de Walden allocated to the quarter ending 23 June 2013.

15. Secondly, by cheque dated 7 August 2013 the Bankrupt paid £25,199 to de Walden, allocated as part payment to the subsequent quarter.

16. Thirdly, by cheque dated 16 August 2013 the Bankrupt paid £25,000 to de Walden, being the balance for the September quarter.

17. Aside from his dealings with ART, Mr Manktelow says he dealt only with the Bankrupt concerning the Lease. On the occasions he attended the Property, there was never any answer at the front door, although often there were visible two or three individuals, including the Bankrupt's wife, working in the front

room. On re-taking possession it was noted that the ground floor was set up as an office, while upstairs were massage tables.

The law, and its application

18. Section 284(1):

"Where a person is made bankrupt, any disposition of property made by that person in the period to which this section applies is void except to the extent that it is or was made with the consent of the court, or is or was subsequently ratified by the court".

19. By subsection (2):

"Subsection (1) applies to a payment (whether in cash or otherwise) as it applies to a disposition of property and, accordingly, where any payment is void by virtue of that subsection, the person paid shall hold the sum paid for the bankrupt as part of his estate".

20. Subsection (3) provides the period.

"This section applies to the period beginning with the day of… the presentation of the bankruptcy petition and ending with the vesting, under Chapter IV of this Part, of the bankrupt's estate in a trustee".

21. Subsection (4) is the material disapplication.

"The preceding provisions of this section do not give a remedy against any person-

(a) in respect of any property or payment which he received before the commencement of the bankruptcy in good faith, for value and without notice that the… bankruptcy petition had been presented, or

(b) in respect of any interest in property which derives from an interest in respect of which there is, by virtue of this subsection, no remedy".

22. Commencement is the date of the order: section 278(a).

23. Subsection (5) is not relevant.

24. Subsection (6) is this:

"A disposition of property is void under this section notwithstanding that the property is not or, as the case may be, would not be comprised in the bankrupt's estate; but nothing in this section affects any disposition made by a person of property held by him on trust for any other person".

The inclusion of non-estate property is curious but manifest.

25. Although this hearing was listed with an order for deponents to attend for cross-examination, shortly beforehand the parties agreed that there were no factual disputes. As became apparent during the hearing, that was not quite accurate: the Respondents maintain that there is insufficient evidence to characterise ART as an agent of the Bankrupt in its receipt of his £30,807 cheque. Aside from that, and assuming that (as I will find) ART was such an agent, the Respondents accept that each of the payments was a disposition or payment within section 284(1) or (2), made within the relevant period. For his

part, the Trustee accepts that in receiving those payments the Respondents acted in good faith and without notice of the Petition.

26. It is convenient first to deal with ART's status.

27. Although he had the power to investigate this, the Trustee is unable to provide factual assistance. Mr Manktelow's evidence is that ART was instructed by WPL, and he therefore understood the payment from ART to be from WPL and not the Bankrupt. de Walden can also point to ongoing correspondence between itself and ART, in the course of which ART described itself as managing the Property on behalf of WPL. On the other side it is also Mr Manktelow's evidence that ART acted for the Bankrupt in negotiating the terms of the Property Lease, and that the Bankrupt was de Walden's sole point of contact at WPL: later, during 2014, there were direct communications between them as de Walden chased him for rent (so described by Mr Manktelow). The second and third challenged payments to de Walden were made directly by the Bankrupt (and nevertheless accepted). It is also uncontroversial that the Property was required in order that the Bankrupt could carry out his dentistry, whether through a vehicle or not. There is no evidence that WPL had any funds of its own, or even a bank account: the two other payments which de Walden received for rent on the Property were from ART and the Bankrupt's wife, Nimrata.

28. On balance, it seems to me that the likelihood is that in receiving the Bankrupt's cheque and making a back-to-back transfer to de Walden, ART was acting as agent for the provider of those monies, such that were they not so used they would revert to the Bankrupt and not to WPL.

29. However, it also seems to me, contrary to the submissions of Mr Beswetherick, that whether ART's receipt was as agent for the Bankrupt or for WPL does not affect de Walden's potential liability under section 284.

30. In *Pettit v Novakovic* [2007] BPIR 1643 HHJ Norris QC (as he then was) grappled with the ambit of section 284(2) set against section 284(1). As he said at [12], *Hollicourt (Contracts) Ltd v Bank of Ireland* [2001] Ch 555 CA was authority in the corporate context of section 127 for the payment of a creditor by an agent, there the bank, being a disposition within section 284(1). As to section 284(2)

> "in order to give content to the subsection I consider one must simply focus upon its very words… in general 'payment' is the process by which money (or some acceptable substitute) passes from one to another, and a 'payment' is the money or value which is the subject of that process. Since the subsection does not qualify the term 'payment' in any way it relates to 'payments' whether or not they involve a disposition of property (in the sense that that has been treated on this appeal viz the transfer of beneficial title). The accountant received a 'payment' properly so described… and the statutory consequence is that he is to be treated as holding it for the bankrupt as part of his estate… [to] be dealt with according to the regime imposed by the Insolvency Act 1986 consequent upon such payment and not the law of private trusts".

31. At [15] HHJ Norris QC addressed the argument of Mr Davern that this gave rise to the (alleged) risk of a double disposition, raised, but not decided, in *Hollicourt*.

"The problem does not arise in the same way under s 284. That section deals with 'dispositions' and also with 'payments'. There is a 'payment' to the accountant. If the beneficial interest in the money paid does not also pass, and the accountant at the direction of the bankrupt pays a creditor, there may also be a 'disposition' by the bankrupt at that point".

32. Here, the Trustee has not sought to make ART liable for its receipt and use of the monies represented by the 19 July cheque which constituted a payment to it under section 284(2). We know neither its state of knowledge nor whether it held the proceeds of the 19 July cheque separately or in a mixed account. Were ART's receipt not as agent, then its state of knowledge would be relevant as it might afford a defence to de Walden under section 284(4)(b). As agent for the Bankrupt, though, its transfer on to de Walden was itself either a section 284(2) payment or, following *Hollicourt*, a section 284(1) disposition.

33. Were ART agent not for the Bankrupt but for WPL the payment it received would still be void and "held for the bankrupt as part of his estate". WPL could not rely on section 284(4) as the Bankrupt was its director. Again, the transfer on to de Walden would be either a disposition or a payment.

34. That brings us to value, the final element which Aurora and de Walden must establish in order to have a defence under section 284(4).

35. For the Trustee, Mr Tucker submits that there are "significant parallels" between the policies and principles underlying section 284 and its corporate equivalent, section 127. Drawing on the authorities under the latter provision and its predecessors (which are much more numerous than under section 284 and its forebears), like the Court of Appeal in *Hollicourt* at [20] he can open

with the resounding description of section 153 of the *Companies Act 1862* by Lord Cairns LJ in *In re Wiltshire Iron Co* (1868) LR 3 Ch App 443, 446:

"a wholesome and necessary provision, to prevent, during the period which must elapse before a petition can be heard, the improper alienation and dissipation of the property of a company in extremis".

36. *Hollicourt* at [21] next cites a contemporary statement, Lightman J in *Coutts & Co v Stock* [2000] 1 WLR 906, 909:

"[section 127 is] part of a statutory scheme designed to prevent the directors of a company, when liquidation is imminent, from disposing of the company's assets to the prejudice of its creditors and to preserve those assets for the benefit of the general body of creditors".

37. At [23] the Court of Appeal treated those two statements as a proper description of the "statutory purpose".

38. Teasing them out, there are two strands: the preservation of assets, and their proper distribution.

39. The latter especially informs the approach to applications for validation. In *In re Gray's Inn Construction Co Ltd* [1980] 1 WLR 711, 718 Buckley LJ stated that

"Since the policy of the law is to procure so far as practicable rateable payments of the unsecured creditors' claims, it is, in my opinion, clear that the court should not validate any transaction or series of transactions which might result in one or more pre-liquidation creditors being paid in full at the expense

of other creditors, who will only receive a dividend, in the absence of special circumstances making such a course desirable in the interests of the unsecured creditors as a body".

40. The importance of the pari passu principle in validation has been recently restated at the highest levels: by Sales LJ in *Express Electrical Distributors Ltd v Beavis* [2016] EWCA Civ 765, [2016] 1 WLR 4783 at [46] and [56]; and, in approval of that, by Lord Mance in *Akers v Samba Financial Group* [2017] UKSC 6, [2017] AC 424 at [47].

41. Mr Tucker also places weight on dicta of HHJ Paul Matthews, sitting as a High Court Judge, in *Officeserve Technologies Ltd v Anthony-Mike* [2017] EWHC 1920 (Ch), at [90] (the italics are original):

"In considering what is and what is not a disposition for the purposes of section 127, it is necessary not to be constrained by what, in formal terms, may be the transfer of one interest in property, wholly and separately, to another person. The mischief against which the section is directed is clear. The destruction, or at least the *reduction* in value, of a property right belonging to the company, causing an immediate and equivalent *accrual* in value to another person, is well within that mischief".

42. That notion of equivalence, or at least passing, of value is one which Mr Tucker suggests should apply to section 284(4)(a).

43. As to value, it is the Trustee's case that section 284(4)(a) "involves consideration of direct value received by the Bankrupt or, in the alternative, involves consideration of the value from the Bankrupt's point of view. This

furthers the principles underlying the section, and the Act, and does not create lacunas", for example were the recipient's payments to third parties treated as "value"; "whatever value is to be taken into account must be value that retains a presence in the bankruptcy estate".

44. The concept of considering the value from the Bankrupt's point of view is founded by the Trustee on section 238(4)(b) of the Act (as that is where these authorities lie):

"For the purposes of this section and section 241, a company enters into a transaction with a person at an undervalue if-…

(b) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company".

The bankruptcy equivalent, section 339(3)(c), is in materially identical terms.

45. Cited is Millett J's description of the court's task in *Re MC Bacon Ltd* [1990] BCLC 324, 340:

"It requires a comparison to be made between the value obtained by the company for the transaction and the value of consideration provided by the company. Both values must be measurable in money or money's worth and both must be considered from the company's point of view".

46. Mr Tucker submits that against these principles section 284(4) must be read as an exception, and therefore narrowly.

47. The Trustee's conclusion is that neither Aurora nor de Walden has "provided value to the Bankrupt… no value was received into the bankruptcy estate as a result of any of the payments. Instead, the payments had the effect of denuding the bankruptcy estate without any countervailing benefit".

48. Mr Beswetherick also avers that his clients' line is in accordance with authority. Although I will expand on it below, it can be put shortly: "value" means what it says; and section 284(4) is a long-standing and principled shield for innocent third parties.

49. There is no doubt that the same two strands of preservation of the insolvent estate's property and the ensuring of its proper, pari passu, distribution permeate both section 127 and section 284.

50. In *In re Eaitisham Ahmed (a Debtor)* [2018] EWCA Civ 519, [2018] BPIR 535 Gloster LJ, with whose judgment Patten and David Richards LJJ agreed, considered Millett LJ's conclusions concerning the doctrine of relation back under sections 37 and 38 of the *Bankruptcy Act 1914* ("BA14") in *In re Dennis (a Bankrupt)* [1996] Ch 80, 104-106. At [43] Gloster LJ quoted all but the last of these excerpts:

"For more than four centuries the act of bankruptcy formed the cornerstone of the English law of bankruptcy. It represented a form of cessio bonorum which marked the moment at which the debtor became insolvent and from which he was to be 'reputed, deemed and taken for a bankrupt'. Bankruptcy proceedings could be taken against him by any of his creditors whose debt was in existence at the date of the act of bankruptcy. If the debtor was afterwards adjudicated bankrupt, his assets were divisible among his creditors as from the

time when he became bankrupt, not from the time when he was adjudged to be so. From this the judges deduced the doctrine of relation back. If the debtor was adjudicated bankrupt, then the title of the trustee in bankruptcy related back to the time of the first available act of bankruptcy".

"If the debtor was adjudicated bankrupt, then as from the date of the act of bankruptcy *neither the debtor nor any person claiming under him who could not bring himself within the protective provisions of the Bankruptcy Acts had any title at all*; as from that date title was vested in the trustee. The position of the debtor and persons who claimed under him during the intermediate period was extremely curious. They did not possess a defeasible title, but either an indefeasible title if the act of bankruptcy was not followed by adjudication or no title at all if it was. Outside the law of bankruptcy no similar ambulatory title was known to the law" (with my italics).

"It is true… that the *purpose* of the statutory provisions was to defeat dealings with the debtor's property after the act of bankruptcy… But the *method* by which that purpose was given effect was not (as in the Companies Acts) to avoid all dispositions of the debtor's property after the relevant date, but to divest the debtor of his property at that date" (original italics).

"It was the policy of the former Bankruptcy Acts that the property of a bankrupt should be available for distribution among his creditors as at the date of the act of bankruptcy".

51. Next, at [44] Gloster LJ tied that policy to the Act.

"In *Re Palmer (Deceased) (A Debtor)* [1994] Ch 316… Vinelott J concluded that s284 had a similar effect to the application of the old doctrine of relation back:

'section 284 has a dual effect. First, it supplements the relation back of the trustee's title by avoiding dispositions after the date of presentation of the petition. Secondly, *it protects dispositions after the presentation of the petition and before the appointment of the trustee which fall within subsections (4)* and (5); to that extent it reflects (though it is not coterminous with) section 45 of the Bankruptcy Act 1914'" (with my italics).

52. Gloster LJ's conclusion, where the bankrupt had transferred shares to the first appellant after presentation of the petition on which he was bankrupted, some of which shares had then been passed on an unknown date to the first appellant's sisters, all of whom were aware of the presentation of the petition, was this at [45].

"In my judgment, the effect of sections 278, 283, 284 and 306 of the Insolvency Act 1986 was that, in the present case, as from the transfer date, the first appellant held the legal title to the shares on the following trusts: (i) contingently for the bankrupt, in the event that a bankruptcy order was indeed made against him; and (ii) subject thereto (i.e. in the event that no such order was made), for himself as absolute owner of both the legal and beneficial title.

As from the date when the bankruptcy order was made… the first appellant and/ or the sisters (if they had had some of the shares transferred to them by this date…) held the legal title on trust for the bankrupt and title to them was vested in Mr Hosking on the latter's appointment as trustee in bankruptcy…

An alternative analysis would be that the first appellant and/ or the sisters held a defeasible or voidable title from the transfer date until the bankruptcy order and thereafter no title to the shares at all, since the transfer was, retrospectively, void."

53. The section 284(4)(a) exception is described in Fletcher *The Law of Insolvency* (5th edition) at 8-150 as "a long-established exception whose ultimate justification is the need to avert the disastrous consequences if parties could no longer safely deal with a person, even honestly and for value, if there was even a possibility that a bankruptcy petition… had been, or was soon to be, presented concerning him". That apparently overblown language is derived from authorities which all fall under the BA14.

54. In more measured terms is Lloyd LJ in *St John Poulton's Trustee in Bankruptcy v Ministry of Justice* [2010] EWCA Civ 392, [2011] Ch 1, which concerned the failure of the court to give the Chief Land Registrar notice of presentation of a bankruptcy petition, causing it not to be registered in the register for pending actions, leading to a sale of the bankrupt's property, apparently at market value, during the currency of the petition. He said this:

"[5]… dispositions of property by the bankrupt during the period before he or she became bankrupt are rendered void in certain circumstances unless made with the consent of the court or later ratified by the court. By that means, in principle, the property of the bankrupt as at the start of the period should remain available for realisation by the trustee in bankruptcy for the benefit of the general body of creditors.

[6] The principle that the trustee in bankruptcy's title relates back in this way to an earlier date raises the possibility that there might be a transaction which is in other respects proper, being for full value and on normal and proper terms, the other party to the transaction having no idea that he is dealing with someone who is subject to a bankruptcy process, and where the relation back of the trustee in bankruptcy's title would therefore put the purchaser at an unreasonable risk of having his title avoided by a subsequent event which he has no reason to foresee and over which he has no control.

[7] The statutory provisions which lie at the heart of this case are those designed to resolve the dilemma presented by, on the one hand the need to protect the general body of creditors by the principle as to relation back of the trustee in bankruptcy's title, and on the other the need to enable persons dealing with someone in relation to whom bankruptcy proceedings are under way to be aware of those proceedings and to protect such persons in appropriate circumstances if they enter into a transaction with the debtor unaware of the bankruptcy process".

55. I do not read the reference in paragraph [6] to "full value" as being a necessary condition to the availability of a section 284(4)(a) defence, which was not there in issue, but as a high-water mark example.

56. For all the congruity in principle between sections 127 and 284, what is apparent from considering their terms and these authorities are the substantial differences. It is probably not helpful to try to rationalise why that should be. There can still be sensed in the wording of section 284 the lingering shades of the BA14. To the extent that, as Lloyd LJ indicates, at least some differences

are attributable to winding-up petitions, but not bankruptcy petitions, being advertised, the rationale has been undermined by the confirmation in *Express Electrical Distributors Ltd v Beavis* that Buckley LJ's apparent distinction between validation applications before and after advertisement (or other awareness of the petition) in *re Gray's Inn Construction Co Ltd* at 718, such that those "when the parties are unaware that a petition has been presented may, it seems, normally be validated by the court", has been misconstrued. Other potential justifications for differences, such as companies but not individuals being obliged to file public accounts, and companies being operated by directors with fiduciary obligations, do not seem sufficient explanation.

57. The best approach is therefore to take section 284 on its own terms.

58. The ambulatory uncertainty described by Millett LJ in *re Dennis* may have serious consequences for those dealing with the debtor without knowledge as to his status. By section 284(2) sums paid will be deemed held "for the bankrupt as part of his estate". The recipient may therefore be an unwitting trustee. That is a situation of significant potential unfairness.

59. In line with the views of Millett LJ in *re Dennis* and Vinelott J in *re Palmer* which I italicised above, it is clear from its context that section 284(4)(a) is a protective section designed to avoid unfairness. It is not an exception to the principles which must therefore be given restricted ambit, but a defence which is part of the principles. It can therefore be construed in accordance with its terms.

60. As a defence, it bears obvious resemblance to that of equity's darling, the bona fide purchaser of the legal estate for value without notice. It is, though, wider, as not distinguishing between disposition of a legal and disposition of an equitable estate.

61. There is no explicit qualification of the word "value": all that is required is "property or payment which he received… for value". So, provided the receipt was not gratuitous, which it will not be where consideration was given, value will have been provided. Whether one should go on to align all aspects of value with its ordinary bona fide purchaser use, so excluding merely nominal value, is not necessary to my decision.

62. Nor is there any explicit requirement that the value be received by the estate rather than a third party. I do not find that surprising where what are being protected are the rights of innocent third parties, which rights have been generated through their dealings with the bankrupt. As Lord Sumption said in *Akers v Samba Financial Group* at [89]:

"The rules of equity which protect transferees acquiring in good faith and without notice are among the fundamental conditions on which equitable interests can exist without injustice".

Earlier, Lord Neuberger had said this at [76]:

"…it would not merely be harsh, but positively unfair for a bona fide purchaser of a legal estate from a third party to find that, because of s 127, the transaction in question was liable to be held void owing to the existence of an equitable interest held by a company of which he had no notice".

63. In saying that, I acknowledge the strength of the Trustee's argument that section 284 is designed to protect the estate for the benefit of a bankrupt's creditors as a whole. As explained, that is not a supreme principle, although legislation which made it so would be perfectly justifiable.

64. It follows that I reject the Trustee's reading of "value" based on the dicta from *Officeserve v Anthony-Mike* and *Re MC Bacon Ltd* quoted above. Each is in a different context, *Officeserve* testing whether the transaction there in issue could amount to a disposition, *MC Bacon* laying out the exercise for the undervalue provisions.

65. These conclusions are not upset by another lacuna to which Mr Tucker points, being the loss of protection under section 339 upon presentation of a petition. That exists because section 341(1) provides, both for transactions at an undervalue and preferences, that the relevant time ends then. Mr Tucker's reading of "value", though, would not remedy the preference point, which leaves just as strange a position. As the editors of *Muir Hunter* remark at 3-700.2, the loss of these remedies is an "apparent, unfortunate, cumulative effect". The remark is apt, particularly as although section 45(a) BA14 allowed payments prior to a receiving order by a bankrupt to any of his creditors who had no notice of the act of bankruptcy, it retained its ability to set them aside insofar as they were fraudulent preferences under section 44. As the editors also remark at 3-700.1 "It is difficult to argue that the words 'for value' in this subsection should be interpreted, by reference to IA 1986 subs.339(3), to mean 'not in consideration of marriage', and 'for a value, in money or money's worth not significantly less than the value of the property'

disposed of by the debtor": it requires the addition of many words which are not there.

66. Another apparent disjunct caused by this interpretation can be noted, between the innocent purchaser who only has to provide value, and the knowing applicant for validation who by Part Three of the *Insolvency Proceedings Practice Direction* must demonstrate that "the debtor is solvent and able to pay their debts as they fall due or that a particular transaction or series of transactions in respect of which the order is sought will be beneficial to or will not prejudice the interests of all the unsecured creditors as a class": paragraph 12.8.8. Showing the latter is likely to require proof that the transaction is at market value. Again, these different approaches seem to me to reflect the respective policies of protecting the innocent purchaser, and protecting the estate.

67. In short, none of these potential failings can simply be smoothed into section 284(4) by beneficent reading of its words.

68. So section 284(4) may be seen to promote certainty in a bankrupt's dealings for value, and which are therefore likely enough within the course of one or other side's business, with innocent third parties; and it gives certainty in a trustee's later investigations into the dealings. So the defence functions as one which is convenient, and fair.

69. It is also a defence which is strictly limited to its three elements. Although the bona fides of Aurora and de Walden has been conceded in this application, the meeting of it is not merely nominal: "it goes beyond mere personal honesty: it requires more than absence of dishonesty" as Russell J said in *In re Dalton (a*

Bankrupt) [1963] Ch 336, 354 of the recipient solicitor who made further payments to a bankrupt's creditors. In the context of the Act, in *Sands and Treharne v Wright* [2010] BPIR 1437 Mr Registrar Simmonds applied *Dalton* to find that, as stated in the headnote, a recipient's

"knowledge of the debtor being in deep financial trouble and that whoever applied the greatest pressure was likely to be paid to the exclusion of other creditors ought to have put him on inquiry, and by accepting the position he avoided finding out the truth. Accordingly, W did not act with good faith".

70. In our case, both Aurora and de Walden provided the value which the Bankrupt intended by making each payment.

71. In furtherance of his profession as a dentist the Bankrupt made the payment of £27,972 as the initial rental, which triggered Aurora's purchase of the Equipment and entry into the Equipment Lease.

72. In the same character, the Bankrupt caused the payment to de Walden through ART, and made the two direct payments to de Walden in respect of the Property Lease. Those payments meant that the Property remained available for use by the Bankrupt and WPL.

73. I would add that each of these was a commercial transaction. We have no evidence as to the Bankrupt's dealings with the Partnership over the Aurora payment, or with WPL over the de Walden payments, because the Trustee has not provided it (presumably because the Bankrupt has not been cooperative). However, on these bare facts the inference must be that arrangements had been or would be made with the Partnership and with WPL which reflected

the value which the Bankrupt had thereby conferred on them, through the release of their concomitant liabilities. In other words, it can be assumed that the Bankrupt's estate did receive benefit for the payments which he had made, through the conferring or imposition of enforceable rights in the same amounts against the Partnership and WPL.

74. The Application as against Aurora and de Walden is dismissed.