Neutral Citation Number: **[2023] EWHC 2673 (Ch)**

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS IN NEWCASTLE

COMPANY AND INSOLVENCY LIST

IN THE MATTER OF THE INSOLVENCY ACT 1986

AND IN THE MATTER OF ONE COLLECTION REAL ESTATE LTD

Case No. CR-2023-NCL-000065

Courtroom No. 2

The Moot Hall
CastleGarth
Newcastle Upon Tyne
NE1 1RQ

Thursday, 6th April 2023

Before: HIS HONOUR JUDGE KRAMER sitting as judge of the High Court

B E T W E E N:

The One Collection Real Estate Ltd
Applicant/Respondent to the Petition

and

Insolvency &Law Ltd
Respondent/Petitioner

MR J RODGER appeared on behalf of the Applicant
MR S NEWMAN appeared on behalf of the Respondent

JUDGMENT
(Approved 7 September 2023)

HHJ KRAMER:

1. I have before me an adjourned application for the transfer of a winding up petition from the Business and Property Courts in London to the Business and Property Courts in Newcastle.
2. The petition was issued on 18 January 2023. It was considered in the Winding Up Court in London on 1 March 2023. On that occasion, as the petition was defended, it was adjourned for the company to file evidence by 15 March 2023 and the petitioner evidence in reply by 12 April 2023. The parties were directed to file and serve listing certificates by 19 April 2023 and the matter to be listed for a non-attended PTR on the first available date after 26 April 2023 for an ICC judge to set a date of hearing.
3. In order to continue trading, the company needed a validation order. An application was made for such an order on 2 March 2023 which came before me on 3 March in Newcastle. This was short notice for the petitioner, although their director, Mr Murray appeared by Teams link and counsel appeared for the company. The application was for both a validation order and for the transfer of the proceedings to Newcastle. I asked for some investigation to be made as to what the position was in London as to regards to the case. What came back was that upon the making of the enquiry, ICC Judge Prentiss made an order that the case be transferred to Newcastle for the purpose of considering whether to make a permanent transfer and to be automatically re-transferred to London subject to the Court's order.
4. Upon discovering the outcome of the enquiry, I made an order dealing with the validation in the short term and adjourned the matter of transfer to give the petitioner an opportunity to have sufficient notice of the application and to be legally represented. Today is the hearing of the application to transfer and of the validation order. I am going to deal with the transfer issue first.
5. I have heard from Mr Rodger, counsel for the company, and Mr Newman, counsel for the petitioner.

6. Mr Rodger argues that under the CPR this case should have been started, that is the petition should have been issued, out of the District Registry in Newcastle. His reasoning is that this a claim being pursued in the Business and Property Court. It is, therefore, one to which Practice Direction 57AA 2.2(1) and following applies, I will look at the text of that shortly. The import of the Practice Direction is that where a case has links with a circuit, it should be issued on that circuit. If it has got links with several circuits, it should be issued in the registry with the most links or the closest links. In support of his argument, he has referred me to some authority upon which he says I should conclude that a petition is 'a claim' so that when the Practice Direction refers to 'claim', that includes a petition.

7. In addition, Mr Rodger says that I should interpret the provisions of the Practice Direction by reference to the underlying policy of regionalism, i.e. that cases which have their heart in a circuit, or are based on activities or property on a particular circuit, should be commenced and tried on that circuit. In support of that policy, he points to the fact that when one comes to look at the rules on transfer, and this is CPR PD57AA paragraph 3, whereas a transfer from London to a district registry requires a request to, and permission from, the receiving registry, a transfer from a registry to London requires an application to the intended transferring registry. There is no requirement that an application for a transfer from London, has to be made in London. He argues that this asymmetrical arrangement supports the contention that the underlying purpose of this part of the rules is that cases which have their base in a location served by a Business and Property Courts outside London, should be dealt with in those courts.

8. Mr Rodger also says that the CPR is to be applied in the case of a petition because part 12.1 of the Insolvency Rules makes provision for it to apply. It states:

   "The provisions of the CPR (including any related Practice Directions) for the purposes of proceedings under Parts 1 to 11 of the Act," which includes winding up petitions, " apply with any necessary modifications, except so far as disapplied by or inconsistent with these Rules."

   Therefore, he says, 57AA applies with a modification that it must apply to petitions as opposed to other sorts of claim.

9. Mr Newman at first indicated that he was not terribly interested in arguing that particular principle, since there was a substantive issue to be dealt with here. He, however, argues that winding up petitions are not 'claims' and that is evident from the fact that when you look at schedule 4 paragraph 1(2) to the Insolvency Rules, which contains a deeming provision with

the effect that a petition is to be treated as a claim form for the purposes of the application of Part 6 of the CPR, which relates to service. He says that if a petition was a 'claim,' the deeming provision would be unnecessary because it would be a claim form to which Part 6 applied in any event.

10. In fact, the paragraph does not deem the petition to be a claim form, it says *"Service is to carried out in accordance with Part 6 of the CPR as that applies to a 'claim form'..."* It is not a deeming provision. Rather, in the part of the Insolvency Rules containing the code for service, some of which is specific to those rules, and it incorporates detailed provisions as to the service of documents under Part 6 of the CPR with some economy.

11. Mr Newman says that a petition is, of its nature, distinct from a claim because in a petition, a remedy is sought for the benefit of creditors at large, not just for the petitioner. It is, essentially, a request to the Court to intervene in the affairs of the company to regulate its conduct, or indeed to wind it up. There is no scope for Part 57AA to deal with winding up petitions.

12. At the beginning of Mr Rodger's submissions, I pointed out certain practical problems that can arise if Part 57AA has the impact which he claims. First, a practice has developed of bulk issuers of winding up petitions, such as Local Authorities, contracting with particular firms of solicitors who handle all their work. Such solicitors ordinarily issue everything through a single court as a matter of commercial convenience. Secondly, if 57AA has to be followed to the letter, the winding up days in the London courts, where I am told it is not uncommon for the hearing of petitions relating to cases involving activities in locations covered by registries outside London, would result in large numbers of orders for the transfer of cases to the eight BPC district registries. Whilst this would happen electronically, I am aware it takes some time to organise and this may create administrative inconvenience. Mr Rodger's response is to says, *"these are the rules,"* the fact that it may be commercially attractive for some larger solicitors and bulk issuers who work in the way they do, is not a reason to depart from the rules and he points to the fact that in other areas of litigation where the bulk issuers have sought to, for instance, issue personal injuries claims through one particular county court, as has happened in Newcastle, if the rules require that they have to go to the defendant's county court, if defended, then this is where such cases are sent. It is just a fact of life.

13. Two cases are relied upon by Mr Rodger on the issue of what is a claim. I take the view that they do not take his case much further. The first was *In Re: International Tin Council*

[1989] 1 Ch 309, where there was a question as to whether the International Tin Council could be protected from winding up on the grounds of its immunity from legal processes. It was held that it could not. I was referred to page 331, at C, of the judgment, where Nourse LJ said, under the heading, Immunity, *" it was argued below on behalf of the ITC that the expression "sue to legal process" did not include the winding up process, but Millet J was clearly right to reject that argument, and it has not been revived on this appeal."* The fact that the pursuit of a petition can be described as *"sue to legal process,"* does not necessarily bring it within the definition of "claim" for the purposes of 57AA.

14. The other authority to which I was referred was *Revenue and Customs Commissioners v Egleton* [2006] EWHC 2313 (Ch), a decision of Briggs J, as he then was. In that case, a winding up petition was issued by HMRC for unpaid VAT. The petitioner sought a freezing order to protect assets, which, if the winding up order was made, would then be available to the liquidator. The assets were in the hands of third parties who, it was alleged, were parties to a VAT fraud involving the petitioned company and against whom the company had substantial claims. It was against them that the order was sought. They argued that there was no jurisdiction to make freezing orders against them as HMRC was not pursuing a cause of action for a money judgment in respect of which freezing order protection was required. Thus, the question that arose for determination was whether the claimant was pursuing a cause of action for a money judgment so as to come within the freezing order jurisdiction. It was held that it was. The petitioner was not precluded from asserting it was pursuing a cause of action by the nature of the relief sought in a winding up petition. It does not seem to me that that is equivalent to stating that for all purposes a petition is a claim or is equivalent to a claim. When one looks at paragraph 20 of the judgment, we see the Court said,

> "It is common feature of a winding up petition, both by creditors and contributories and of section 459 petitions that none of them is concerned in essence with the obtaining of monetary judgment by the petitioner, albeit there may be circumstances where such an order might be made on the hearing of section 459 petition. All three types of proceedings consist of an indication of the power of the court to intervene in the affairs of a company for the benefit of different classes of stakeholder. For my part, using the analysis of Master of the Rolls, Sir Thomas Bingham , to which I have already referred, I can see no reason why the grant of appropriate interim relief, including orders of freezing the assets of the company itself should not in a proper case be made out so as to ensure the effective enforcement of the court orders."

Accordingly, it does not seem to me that that case was really concerned with the question as to whether a petition was a claim.

15. Then we come on to the Rules themselves. The Insolvency Rules 12.1, provides that,

> "The provisions of the CPR (including any related Practice Directions) apply for the purposes of proceedings under parts A1 to A11 of the Act with any necessary modifications, except so far as disapplied by or inconsistent with these Rules."

16. The relevant provision to consider for cases issued in the Business and Property Courts is Practice Direction 57AA, as is apparent from 57AA paragraph 1.6 which provides,

> "This practice direction applies to cases in the Business and Property Courts or cases which are to be issued in those courts, in the event of inconsistency between the Practice Direction and any other Practice Direction, the provisions of this practice direction shall prevail."

On the face of it this would apply to winding up petitions, which are issued in the Insolvency and Companies List of the Business and Property Courts.

17. Under the heading, "Starting Proceedings in the Business and Property Courts is subject to CPR Parts 7 and 8, I will come back to that introduction, it states:

> "2.2(1) A claimant wishing to issue a claim in the Business and Property Courts chooses which court list or sub-list from within the Business and Property Courts in which to issue its claim, based (subject to sub-paragraph (2)) on the principle subject matter of the dispute. (The courts, lists and sub-lists are set out in paragraphs 1.3 and 1.4.)"

18. The Insolvency and Companies list is one of the lists specified in PD 57AA paragraph 1.3. This case has been issued in a Business and Property Court in the Insolvency and Companies list. Paragraph 1.5 sets out,

> "The Business and Property Courts operate within and are subject to all statutory provisions, rules together with all procedure rules, practice directions applicable to the proceedings concerned and 1.5.2, in particular, the following provisions of the CPR apply."

There is then reference to 10 Parts of the CPR and 4 Practice Directions which relate to specialist proceedings and include the Practice Direction for Insolvency.

19. Moving on to paragraph 2.3 of the Practice Direction, it provides:

> "2.3(1) Before a claimant issues a claim in the Business and Property Courts, the claimant must determine the appropriate location in which to issue the claim." That is a requirement as it is something the clamant must determine.

> "2.3(2) With the exception of claims started under Parts 58,60,61, and 62," with which we are not concerned, " claims which are intended to be issued in Business and Property Courts and which have significant links to a particular circuit outside London, or anywhere else in the South Eastern circuit, must be issued in the B&PC's district registry located in the circuit in question. If a claim has significant links with more than one circuit, the claim should be issued in the location which the claim has the most significant links."

This appears to be a mandatory requirement that the claim must be issued on the circuit in which the relevant district registry is located, but it if has got links with more than one circuit, then it should be issued in the one with the most significant links. I am not going to go on and deal with the relevant links at the moment, because we are just dealing with the general point as to whether this applies to insolvency proceedings.

20. What I conclude from these provisions is that although, on one view, paragraph 2.1, which refers to starting proceedings in the Business and Property Courts, is restricted to CPR part 7 and 8 claims, given the reference to those parts, the Insolvency Rules make is clear that the CPR applies to insolvency proceedings with the necessary modifications. Accordingly, though winding up proceedings are not commenced under Part 7 or 8, the effect of Rule 12.1 is that the CPR applies with modifications adapted for the exigencies of winding up, and therefore PD 57AA, paragraph 2.2 onwards does apply to such proceedings. A petition does not need to be of its nature a 'claim form' for the purposes of Part 6, Mr Newman's argument, to reach that conclusion. I accept Mr Roger's overarching point that the use of the word 'claim' in the context of paragraph 2.3 of the Practice Direction, which deals with the issue of proceeding in the Insolvency and Companies List, amongst others, must be a generic term to mean the process by which proceedings are commenced, or to put it another way, it is the originating process by which a court is asked to grant relief. These meanings can apply equally to petitions as they do to a claim form.

21. The impact of my conclusion is that if the only significant links are with a circuit outside London, the petition must be issued in the B&PC district registry with which it has significant links. If, however, there are significant links with more than one circuit, then they ought to be issued on the circuit or in the location with the most significant links.

22. For these purposes, London and the South Eastern circuit must, in order to make this intelligible, be treated as a circuit with which the proceedings could have significant links,

for otherwise, paragraph 2.3(2) would have the effect that any link with the South Eastern circuit or London was irrelevant in conducting, what must be, a balancing exercise.

23. I agree with Mr Rodger, that this instruction is in keeping with what is clearly the purpose behind Rule 2.3 and indeed the provision as to transfer, which is that cases which are linked to a particular circuit, should be dealt with on that circuit and the days when everything went to London, are now long gone. Indeed, that has been the position ever since the foundation of the Business and Property Courts.

24. I next look at the particular circumstances of this case because both sides say there are significant links with, on one the hand Newcastle, and on the other London, and therefore, I am in the position of having to exercise a discretion as to whether the transfer should take place.

25. I should just say this, that I have not been referred to what the Insolvency Rules say about transfer, but having seen the rules on the subject, they are not particularly helpful. They refer to transfers between the High Court and a specialist hearing centre, which is a County Court centre which deals with insolvency work.

26. I start by looking at what amounts to a link with a particular circuit. 57AA 2.3(3) provides that:

> "(a) A link to a particular circuit is established where (a) one or more of the parties has its address or registered office in the circuit in question, with extra weight being given to the address of a non-represented party."

The respondent company has its address within the bailiwick of the Newcastle BPC, it is based in Chester-le- Street in County Durham. The directors live in this part of the North-East.

> "(b) at least one of the witnesses expected to give oral evidence at trial or other hearing is located in the circuit."

That does not apply here. There will not be any live witness evidence.

> "(c) the dispute occurred in a location within the circuit."

The company is a lettings management agency which collects money from tenants and hands it over to the landlord and they operate in Newcastle. The property, which is the subject of the dispute giving rise to the alleged debt is Hadrian Tower in Newcastle and the original agreement between the company and the landlord, to whom it was to pay the money recovered from tenants,

was one made in Newcastle, the landlord being a Newcastle company. The interest of the petitioner is that it says that it is an assignee of a debt owed to a landlord of Hadrian Tower flats; there is a dispute as to whether this was a superior or the same landlord to that which the company contracted with, but, at this stage, I do not need to go into that. In summary, the contract, the money that was received, the money that is being paid out, all relates to locations and events in Newcastle.

"(d)The dispute concerns land, goods or other assets located in a circuit."

The dispute is not as to the land, it concerns a contract as to what is to happen to the rent taken from the land.

"(e) the party's legal representatives are based on the circuit.",

The company's legal representatives are based on this circuit, its directors live here, and its accountants are up here as well, so they are very heavily based in Newcastle. The petitioner's connection with all of this is that it claims to be the assignee of a debt of a Newcastle-based organisation. Overwhelmingly, the links to this case are with the North East of England and not with London. As I indicated, the petitioner only comes into this because it says that it is the assignee of a debt, but as I pointed out in argument, if you are in the business of purchasing debts from people around the country, you may have to expect that, if you wish to pursue the debts, you have to pursue the debtor on their home territory, where the debt occurred. Comparing the above links, the closest and most numerous are with Newcastle, and that points to the case proceeding in Newcastle.

27. That, however, is not the end of the story, because on transfer, there are further considerations, and these are to be found in Rule 30 of the CPR. Rule 30.2(4) says that the "High Court may, having regard to the criteria in rule 30.3, order proceedings… to be transferred in the Royal Courts of Justice or a district registry or from a district registry to the Royal Courts of Justice or to another district registry"

The factors referred to are those set out in Rule 30.3(2), and these are:

"(a) the financial value of the claim and the amount in dispute, if different."

This is a winding up petition, but it is a winding up on a debt of £11,500, so it is a a case involving small value.

"(b) Whether it would be more convenient or fair for hearings, including the trial to be held in some other court."

As regards to convenience or fairness, Mr Rodger made the point that since the petitioner is an assignee, it should stand in the shoes of the assignor, and since the assignor is up here, it should be in no better position than them. That argument really relates to the assignee's legal rights, but I think, what makes it more convenient or fair for hearings here, is that the party being pursued and its directors and therefore its records and the accountants are all up here in Newcastle, or nearby. It is a good reason for saying that it is more convenient to deal with up here. It is inevitably more convenient for the petitioner to deal with it in London because they are based in London, but they chose to bring a claim involving a company based in the North East.

The petitioner says that London is more convenient as it has a deal with direct access counsel, so they can get them very cheaply, whereas on the last hearing in London, where counsel from Newcastle came down to represent the company they charged a great deal of money. That, however, rather highlights the point that, as regards legal representation, it is natural that the company, who have a local lawyer, would wish to be represented by local counsel who they know rather than instructing someone in London who they do not, and that the use of counsel who have to travel to London may involve extra cost. The claimant is in no different position if the case is transferred, its counsel can come up to Newcastle, albeit that it says that this would also be productive of extra cost. Therefore, as regards what is more convenient as regards the selection of counsel, I do not see there is much between the parties.

"(c) The availability of a judge specialised in this type of claim."

We have specialist judges sitting in Newcastle who deal with winding up petitions. Further, in this regard, the court at Newcastle can get the petition on a great deal more quickly than London. I have already indicated that under the directions at the first hearing consideration is to be given to the listing of the petition after 26 April, that is it will some stage after 26 April be in an ICC judge's boxwork to look at availability and listing. In Newcastle, this case can be placed before a Business and Property Court District Judge for half a day on the afternoon of 25 April. Therefore, we are in a position to deal with this much more quickly, and that, in the context of a winding up petition is important because the longer it goes on, the more damage can be done to the company if the petition is not granted.

"(d) Whether the facts, legal issues, remedies or procedures involved are simple or complex."

They are very simple here.

"(e) The importance of the outcome of the claim to the public in general."

There is no general importance to the public in the outcome.

"(f) The facilities available the Court at which the claim is being dealt with."

This seems to be directed a physical arrangements at court for participants with particular needs and does not arise in this case.

There are two further consideration relating to declarations of incompatibility and proceedings involving the Crown which do not require consideration.

28. The Court is also required to look at the PD57AA factors set out in paragraph 3.3. I have dealt with 3.3(a) which concerns the links between the case and this circuit. As regards:

"(b) whether court's resources, deployment constraints or fairness require that the hearing be held in another court than the court where it was issued."

The fact is, we have more capacity in Newcastle to deal with this quickly than they have in London, which is an important point.

"(c) the wishes of the parties, which bear special weight in the decision but may not be determinative." The parties are at odds about this, so that might be regarded as an equal and opposite consideration.

"(d) the international nature of the case"

This is not an international case. I notice that the paragraph suggests that trial centres with international transport links are ultimately suitable for international cases. It is the fact that Newcastle has international transport links and on that basis would be suitable for cases which are international in nature, but, as I said, that it is not an issue in this case.

"(e) the availability of a judge specialising in the type of claim in question."

As indicated earlier, Newcastle has both the judge and the capacity for the judge to deal with the case sooner than can London.

29. All those criteria which are identified as pointing towards the case proceeding in Newcastle weigh in the balance to favour there being a transfer of the case to Newcastle. The final determination of the petition will take place on the afternoon of 25 April 2023 at the Civil and Family Court and Tribunal Centre, Barras Bridge, Newcastle.

30. That is what I have to say about transfer.

(The judgment relating to the validation order was not transcribed.)

Costs

1. As regards the issue of costs, I am faced with an application for costs by the successful party, the company. They say they have been put to the costs of seeking the validation order because the petitioning creditor is not prepared to consent to it. The petitioning creditor has fought it, the petitioning creditor has sought to prevent the transfer of the case to Newcastle and therefore the company should have its costs.

2. Mr Newman says that this should all be dealt with on the petition. If the petition is dismissed, the Company will get its costs from the petitioner and amongst those costs would be the costs of the validation order and the application for transfer. He asks, what is to be lost by putting the matter off until then. After all, and this is an observation that I made, if the petition proceeded and was successful, it could be said that the validation decision today turned out to have been incorrect as to whether the company was solvent.

3. Mr Rodger argues first, the company has been put to this expense, despite inviting the petitioner to agree to the approach they put forward as to validation and transfer. It should have its costs now because that is the ordinary position where a party is successful. No authority has been put forward for the suggestion that one has to wait until the hearing of the petition. Furthermore, given the stance of the company and its success, even if the petition succeeded, in which case, all these costs would fall into the petition, why should the unsecured creditors be prejudiced by the petitioner having adopted an unrealistic or erroneous position in relation to these two applications.

4. I take the view that Mr Rodger really has a good point there. The petitioner sought to take their stand on this validation and transfer, they lost In those circumstances, it seems to me that they should pay the costs of this application.

End of Judgment.

Transcript of a recording by Ubiqus
291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiqus.com

Ubiqus hereby certify that the above is an accurate and complete record of the proceedings or part thereof