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Case No: BR-2022-000547

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST

IN THE MATTER OF ZHANG ZHENXIN (DECEASED)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986
AND IN THE MATTER OF THE ADMINISTRATION OF INSOLVENT ESTATES OF
DECEASED PERSONS ORDER 1986

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 03/11/2023

Before:

CHIEF INSOLVENCY AND COMPANIES COURT JUDGE BRIGGS

Between:

ETERNITY SKY INVESTMENTS LIMITED

Petitioning
Creditor

- and -

THE ESTATE OF ZHANG ZHENXIN
(DECEASED)

Deceased
Debtor

-and-

MRS XIAOMIN ZHANG

BLAIR LEAHY KC and PAUL FRADLEY (instructed by Macfarlanes LLP) for the
Petitioning Creditor

PHILIP MARSHALL KC and WILSON LEUNG (instructed by McDermott Will &
Emery UK LLP) for Mrs Xiaomin Zhang

Hearing date: 20 October 2023
Written submissions 23 October 2023.

Approved Judgment

This judgment was handed down remotely at 10.30am on 3 November 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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CHIEF INSOLVENCY AND COMPANIES COURT JUDGE BRIGGS

CICC Judge Briggs:

Introduction

1. This judgment concerns the appointment of an interim receiver. I reserved judgment at the end of a day's hearing as (i) new authorities and evidence were provided to the court during the day and (ii) the parties have found little authority concerning the appointments of interim receivers.
2. Eternity Sky Investments Limited seeks an order that interim receivers be appointed over the estate of Mr Zhang Zhenxin who died on 18 September 2019.
3. Eternity Sky is a company incorporated in the British Virgin Islands and a subsidiary of China Huarong Overseas Investment Holdings Co Limited which itself forms part of a large group of companies known as the Huarong Group. It is said that the Huarong Group is one of the largest state-owned corporate groups in China. The Huarong Group manages assets and is involved in lending and other forms of equity investment.
4. On 22 December 2022 Eternity Sky presented a petition pursuant to the Administration of Insolvent Estates of Deceased Persons Order 1986 seeking an order for administration.
5. The petition pleads that Mr Zhang resided in London for the greater part of 6 months prior to his death and that he is indebted to Eternity Sky in the sum of £52,022,976.89.
6. This debt is said to arise under a personal guarantee dated 8 May 2016. The personal guarantee guaranteed the liabilities of Chong Sing Holdings FinTech Group Limited (in liquidation) in connection with convertible bonds issued by Chong Sing to Eternity Sky in the amount of HKD500 million. The bonds matured in May 2019.
7. Eternity Sky was one of six subscribers to the bond issuance, taking half the total issue.
8. Mrs Zhang also provided a personal guarantee to Eternity Sky on the same day and for the same obligations.
9. It is common ground that no payment was made by Chong Sing and no payments have been made under the personal guarantees.
10. The guarantees are governed by the laws of Hong Kong.

Background

11. Chong Sing was incorporated in the Cayman Islands and registered in Hong Kong. It conducted its business in Hong Kong and the People's Republic of China and was listed on the Growth Enterprise Market Hong Kong. It was one company in a group of three known as UCF Holdings Group.
12. In July 2019 Chong Sing was suspended from trading amid allegations of financial irregularities and embezzlement.
13. It is not disputed that Chong Sing was managed and controlled by Mr Zhang, even though he was appointed a non-executive director.

14. China Huarong International Limited is a subsidiary of the Huarong Group. Huarong International made a demand under the facility agreement following an event of default in relation to a term loan assigned to one of its subsidiaries (and supporting creditor, Pure Virtue Enterprises Limited). It served Chong Sing with a statutory demand in respect of its failure to pay the capital and interest on the convertible bonds. The demand is dated 27 December 2019.
15. On 17 June 2020 Chong Sing was compulsorily wound up in the Cayman Islands. Liquidators were appointed on 14 September 2020.
16. The liquidators have admitted proofs of debt made by Eternity Sky and Pure Virtue and has made distributions. Significant debt remains outstanding despite the distributions.
17. Mr Zhang had many business interests worldwide. He held interests in at least 12 companies incorporated in England and Wales and held business and property interests in Ireland, France and Switzerland through three principal corporate vehicles incorporated in the British Virgin Islands: Bellingdon Quartz Limited, Shenglin Holdings Limited and Dehui Limited. The British Virgin Island companies were and remain predominately concerned in the hospitality sector.
18. According to a claim issued, since the death of Mr Zhang, by Mrs Zhang in the Eastern Caribbean Supreme Court of the British Virgin Islands, Mr Zhang had an agreement with someone known as Vincent Lee to the effect that he would hold Mr Zhang's interests in the British Virgin Islands as bare trustee for Mr and Mrs Zhang.

Mrs Zhang

19. Mrs Zhang is domiciled in London and renounced her Chinese nationality when she became a British national in 2019.
20. Mrs Zhang claims to be a beneficiary of the deceased's estate by virtue of the laws of the People's Republic of China. For the purposes of this hearing the claim to be the sole beneficiary is not contested. The current position is that no letters of administration of the deceased's estate have been granted. In her capacity as beneficiary, Mrs Zhang opposes the petition for an administration order and opposes this application for the appointment of interim receivers. Although her standing to oppose the petition and this application have been called into question, I heard no argument on the issue.
21. Mrs Zhang claims that any wrong doing of her late husband affects Eternity Sky since the deceased and Mr Lai, the late chairman of the Huarong Group, were friends.
22. In 2018 Mr Lai was removed from his position and charged with corruption by the Supreme People's Procuratorate of the People's Republic of China. In August 2020 he pleaded guilty. He was sentenced to death and subsequently executed.
23. On 31 May 2022, Pure Virtue initiated arbitration proceedings against Mrs Zhang and any statutory beneficiaries of Mr Zhang's estate in China before the Shanghai International Economic and Trade Arbitration Commission. Pure Virtue asked the arbitrator to find that Mrs Zhang and the deceased's estate are liable under the personal guarantees given in support of the term loan provided by Pure Virtue to Chong Sing.

24. Mrs Zhang argued that as the Pure Virtue demand was made after the death of Mr Zhang, it is unenforceable against his estate under the laws of the People’s Republic of China.
25. On 19 June 2022, Mrs Zhang commenced arbitration proceedings in Hong Kong against Eternity Sky. She sought declarations that the personal guarantee was not valid or binding; that she executed the guarantee as a result of undue influence exerted by Mr Zhang; alternatively that the guarantee had been rescinded on the ground that it was an unconscionable bargain.
26. On 23 August 2022 the Hong Kong arbitral tribunal made an award in favour of Eternity Sky against Mrs Zhang, and confirmed her liability under the personal guarantee.
27. In October 2022 Eternity Sky applied to the Commercial Court to enforce the Hong Kong award. An enforcement order was made on 27 October 2022. Mrs Zhang applied for the order to be set aside on the basis that enforcement was contrary to English public policy.
28. Pending the hearing of the set aside application, Eternity Sky made an application for a freezing order. The application was heard and dismissed on 6 April 2023.
29. Mrs Zhang subsequently applied for an adjournment of the hearing to set aside the enforcement order. One of the reasons given for an adjournment was that the bond issue and subscription were tainted by illegality. Little information about the illegality defence was provided, at that time. The adjournment was refused.
30. On 28 July 2023 Bright J affirmed the enforcement order and dismissed the set aside application. However, he stayed execution and gave permission to appeal on limited grounds.

Grounds for the Administration order

31. Sha Tao is the Senior Vice President of the Asset Management Department of China Huarong Overseas Investment Co. Limited. She explains in her evidence that the petition (for an insolvency administration order) has been served on Mrs Zhang only in her capacity as a potential beneficiary [7]:

“As no letters of administration have ever been granted in respect of Mr Zhang’s estate (the “Estate”), there were no personal representatives on which to serve the Petition. The Petitioning Creditor therefore arranged for a copy of the Petition and of the evidence in support to be served on Mrs Zhang in her capacity as a potential beneficiary of the estate under PRC law. Mrs Zhang duly lodged a notice of opposition to the Petition. Mrs Zhang indicated at paragraph 3 of the Notice of Opposition that she intended to apply for an order that, in the absence of a personal representative, she be entitled to represent the Estate for the purpose of these proceedings. In practice, Mrs Zhang has never applied for such an order and at present continues only to represent the Estate in an informal capacity.”

32. Mrs Zhang will oppose, according to the evidence, an administration order on two grounds:
- i) The purpose of the Eternity Sky subscription was to fund insolvent entities within the UCF Group to create the false illusion (to the detriment of bona fide creditors and investors) that those entities and the UCF Group as a whole were financially stable.
 - ii) This purpose was known to Eternity Sky and Huarong International Financial Holdings.
33. In his second witness statement Mr Keyte (a solicitor acting for Mrs Zhang) explains that “Mrs Zhang’s legal team has obtained significant additional documentation” to make good the claim.
34. The “significant additional documentation” was obtained from the liquidators of a Hong Kong company known as Vigo Investments, and a company known as Hongda Financial (members of the UCF Group). The disclosure is said to indicate that these companies received funds raised from the bond issue. If that is the case, it is said, then the bond subscriptions were not issued in Chong Sing’s best interests, or for genuine commercial purposes.

Interim Receiver application

35. The deceased’s estate has been unrepresented since the death of Mr Zhang. Although asset disposal has taken place since the death of Mr Zhang it was not until August 2023 that Eternity Sky discovered two major assets, in which Mr Zhang held an interest, had been dealt with and disposed of.
36. Mr Beale, a solicitor at MacFarlanes LLP says:
- “In late August 2023, the Petitioning Creditor became aware, as a result of further investigations by its asset tracing investigators, that the Chalet Royalp was sold in May 2023 and that the Chateau de Tourreau was also sold in July 2023.”
37. It would unnecessarily lengthen this judgment if I were to set out the full correspondence between the solicitors. The following is in my view sufficient:

Letter dated 22 September 2023- Macfarlanes to McDermott Will & Emery

- i) “we indicated in that letter [18 September] that we intended to make additional applications...which may include...an application for the appointment of an interim receiver”.
- ii) “Investigations disclosed that: Tourreau SAS’s immediate shareholder was a Luxembourg company, Global Villas S.à r.l; Global Villas S.à r.l also owned RoyAlp SA; RoyAlp SA in turn owned the Chalet Royalp in Villars-sur-Ollon, Vaud, Switzerland; According to the database of the French Institut National de la Propriété Industrielle, Mr Zhang was the ultimate beneficial owner of Tourreau SAS...Mr Zhang was also the ultimate beneficial owner of Global Villas S.à.r.l. and RoyAlp SA...the prices paid for Chateau de Tourreau and

Chalet Royalp are unknown. The present whereabouts of any sale proceeds is also unknown. The ultimate owner of Global Villas is Dehui Limited, a BVI company, and Mr Zhang's estate has a 50% interest that company".

- iii) "Mrs Zhang is president of the board of directors of RoyAlp SA, the former owner of Chalet Royalp".
- iv) "Our client believes that, as a beneficiary of her late husband's estate, Mrs Zhang ought to be equally concerned about the disposals which have been taking place and the risk of dissipation of the proceeds unless she is herself involved in these disposals."
- v) "Our client therefore invites Mrs Zhang expressly to consent to our client's proposed appointment of an interim receiver, not least because this would appear also to be in the interests of the beneficiaries of the estate."

Letter dated 27 September 2023- McDermott Will & Emery to MacFarlanes

- vi) "Chalet Royalp was sold on 15 May 2023 for CHF 20,500,000. The sale of Chalet Royalp was approved by the board of Chalet RoyAlp Villars SA and conducted on an arms-length basis with an independent third-party buyer. The sale was principally motivated by cash flow problems faced by the hotel post-Covid, which were exacerbated by the financing arrangements in place at the time, including an outstanding loan with Credit Suisse in the amount of CHF 10,000,000. The sale proceeds have primarily been used to repay the Credit Suisse loan and satisfy other liabilities of the hotel including outstanding bills, estate agent fees and other management expenses. The speculative assertions regarding the suggested confidentiality of the sale are completely without foundation. Our client is not aware of either the relevant sale agreement containing such a term or there being a separate confidentiality agreement between the parties. We can only assume that your client has sought to draw completely misplaced inferences from non-existent confidentiality provisions to bolster its weak case for the appointment of an interim receiver."
- vii) "Chateau de Tourreau was sold on 13 July 2023 for c. EUR 4,000,000. The sale of Chateau de Tourreau was approved by the board of Tourreau SAS and conducted on an arms-length basis with an independent third-party buyer. The sale was principally motivated by cash flow problems faced by the hotel post-Covid and the need to repay an outstanding loan extended by the Old Thorns Hotel group. The sale proceeds have primarily been used to repay the Old Thorns loan, extend a further loan to Old Thorns and satisfy other liabilities of the hotel including outstanding bills, estate agent fees and other management expenses. EUR 900,000 remains with the French notary in accordance with local law requirements".

Letter dated 29 September 2023- Macfarlanes to McDermott Will & Emery

- viii) "Of greatest present concern, however, is the suggestion in your letter that, provided the shares in Dehui Limited continue to be held on trust by Mr Lee for the existing beneficiaries of that trust and are not disposed of, our client can have no justified concern should Dehui Limited dispose of or otherwise

dissipate its assets, or if any of its subsidiaries dispose of or otherwise dissipate their assets in any manner or on any terms which the directors of those companies think fit”.

- ix) “There is no suggestion in your letter that the directors of those companies understand the need to have regard to the interests of Mr Zhang’s estate, and in particular to the interests of our client and the other unpaid creditors of the estate, in their decision-making processes”.
- x) “please confirm by return that Mrs Zhang undertakes that she will not procure, approve or otherwise seek to influence or involve herself in any decision of Dehui Limited or any of its subsidiaries (whether to dispose of any asset of any of those companies, to make any payment to any person or otherwise) without giving three business days’ prior written notice to our client, via this firm, and explaining the decision is which she is proposing to involve herself and the reason why she needs to be involved in that decision”.

Letter dated 2 October 2023- McDermott Will & Emery to Macfarlanes

- xi) “Your letter goes on to make the absurd request that Mrs Zhang undertakes not to “seek to influence or involve herself in any decision of Dehui Limited or any of its subsidiaries”, which would in fact put Mrs Zhang in breach of her duties as a director of those companies and is therefore self-evidently unacceptable.”
38. On 4 October 2023 Eternity Sky issued the application to appoint an interim receiver.
39. Mrs Zhang opposes the application first, because the application fails to comply with the relevant rules provided by the Insolvency Rules (England & Wales) 2016. Secondly, it is said that Eternity Sky is unable to show that it will succeed on the petition for an administration order. Thirdly, that it is not “necessary” to appoint receivers. Fourthly, there is no urgency and lastly, an appointment would cause “significant prejudice” to the estate.
40. The first objection was not argued orally as Eternity Sky provided late evidence of compliance with the insolvency rules.
41. The second and third objections are based on similar arguments, namely that the estate is not in jeopardy. The operating subsidiaries are professionally managed, and there is no evidence that Mr Lee is dissipating assets in the British Virgin Islands. It is said that the dispositions in May and July 2023 were approved by the boards of the operating subsidiaries and made for a proper purpose, and that Mrs Zhang is under no legal obligation to inform Eternity Sky of any dealings.
42. Mrs Zhang relies on the failed attempt to obtain a freezing order in April 2023 to support the submission that there is no risk of dissipation of the estate’s assets. The difficulty of relying on the judgment of HHJ Pelling KC, who gave judgment dismissing the freezing order application, is apparent from his judgment [18]:

“The freezing order sought is one which restrains the [Mrs Zhang] from removing asset from England and Wales or diminishing the value of her assets in England and Wales up to

a value of £63 million. Thus, I am concerned for present purposes with the [Mrs Zhang's] assets in England.” (emphasis supplied).

The estate of Mr Zhang

43. The full extent of the deceased's assets and liabilities is not known. The evidence before the court is that the estate is likely to be insolvent. It was acknowledged before me that Mrs Zhang has provided no evidence to the contrary.
44. Sha Tao says that her knowledge of the deceased's estate is derived from (i) a signed statement of assets and liabilities provided by Mr Zhang on 5 May 2016; (ii) a signed statement of assets provided by Mr Zhang to China Huarong Macau on 24 August 2017; (iii) results from an investigator commissioned to trace assets in 2021 and 2022; (iv) a civil judgment handed down in the Peoples' Republic of China; (v) public reports; (vi) credit reports and (vii) information provided by affiliates of Huarong Overseas. She exhibits to her statement a table setting out the known liabilities and estimated values of the deceased's estate. That table is appended to this judgment.
45. Mr Beale of MacFarlanes, summaries the position:
- “Ms Tao explained that the Petitioning Creditor understood that Mr Zhang held his business and property interests in the UK, Ireland, France and Switzerland through three BVI companies, Bellingdon Quartz Limited, Shenglin Holdings Limited and Dehui Limited ... The business and property interests themselves were understood to be held in subsidiaries of the BVI Companies...Ms Tao provides details of the UK and Isle of Man subsidiaries of whose existence the Petitioning Creditor was aware, along with details of the roles that the Petitioning Creditor understood that those companies played. Ms Tao explained that the Eastern Caribbean Supreme Court had made an order that the shares in the BVI Companies were held by Mr Vincent Lee upon a bare trust as to 50% for Mrs Zhang absolutely and as to 50% for the estate of Mr Zhang (the “Estate”). The reason for this 50:50 split is that, ... under PRC matrimonial law Mrs Zhang is entitled to one half of her husband's assets...Ms Tao also gave details of the French and Swiss subsidiaries of whose existence the Petitioning Creditor was aware and along with details of the roles that the Petitioning Creditor played... Ms Tao set out the details of the liabilities which Mr Zhang had previously disclosed to Huarong in the Statements of Assets that he had provided in 2016 and 2017.”
46. Sha Tao concludes that the total value of the estate is £70,502,260.40 and the known liabilities: £273,878,217.04. The liabilities based on demands made total £145,392,476.36. The estimated asset value, based on the documentation and information provided by the deceased will have deteriorated due to known disposals. For example, the sale of Buckinghamshire Park Resort Holdings Limited in November 2018, the transfer of EagleResort in July 2019, disposition of the Castlemartyr Report Hotel for about €20,000,000 in July 2021 and the recent sales of Chalet Royalp in May

2023 and the Chateau de Tourreau in July 2023. Further, the 2017 statement of assets produced by Mr Zhang included a holding in a Chinese company known as Dalian Lianhe Venture Investment Co. Ltd. A report suggests that the value of his holding in this company as stated in the statement of assets is unreliable. That is because Dalian Lianhe Venture Investment Co now faces some 500 court and enforcement proceedings.

47. Against this is the contention made by Mrs Zhang that the supporting creditor's demand of £93,369,499.47 is not due because the demand was made after the death of the deceased. If there is no liability due to the timing of the demand the total liabilities fall to £180,508,718 with the demanded liabilities at £52,022,976.60.
48. As matters stand the Shanghai International Economic and Trade Arbitration Commission has found, just days before this hearing, that although Mr Zhang had died before a demand was made by Pure Virtue (the supporting creditor) the debt remained and the personal guarantees executed by the deceased and Mrs Zhang are enforceable.

The appointment of interim receivers- legal analysis

49. Section 286 of the Insolvency Act 1986 (the "Act") provides (where relevant):
 - 1) The court may, if it is shown to be necessary for the protection of the debtor's property, at any time after the presentation of a bankruptcy petition and before making a bankruptcy order, appoint the official receiver or an insolvency practitioner to be interim receiver of the debtor's property.
 - (3) The court may by an order appointing any person to be an interim receiver direct that his powers shall be limited or restricted in any respect.
50. Detailed provisions regarding the application for appointment of an interim receiver, and the order of appointment, are set out in Insolvency Rules (England and Wales) 2016 rr.10.49-10.56.
51. Mrs Zhang submitted that Eternity Sky is not able, on the facts of this case, to persuade the court to make a statement as required by rule 10.51(e)(i) of the Insolvency Rules, namely:

"that the court is satisfied that the debtor is unable to pay the debtor's debts"
52. Lending ordinary meaning to the words and having regard to any technical words in section 286 of the Insolvency Act, the court has a discretion to appoint interim receivers where (i) a petition has been presented but no final order on the petition has been made and (ii) it is demonstrated to the satisfaction of the court that (a) the debtor's estate needs protection and (b) it is necessary for its protection to appoint a receiver.
53. It is argued by Eternity Sky that the court should apply the approach taken to the applications for interim injunctive relief, adopting the principles provided in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396. It is submitted that this is appropriate as

the court is concerned, when deciding to make an order, to hold the ring for a finite time between the making of the interim order and the making of a bankruptcy or insolvency administration order.

54. The jurisprudence relating to the appointment of provisional liquidators, developed over many years, provides some helpful guidance, albeit the language of the relative statutory provisions is different. In *Commissioners for HM Revenue & Customs v Rochdale Drinks Distributions Ltd* [2012] BCLC 748, the Court of Appeal said that the appointment of such liquidators to a trading company was a most serious step, Rimer LJ observed [75]:

“The power to appoint a provisional liquidator is, therefore, a broad and general one in the sense that, provided that the jurisdictional conditions in s 135 (1) and (2) are met, the section imposes no limitations upon, nor does it prescribe, the criteria to be adopted by the court when considering an application for such an Appointment.”

55. The reason, he explained, why the court thought it a “most serious step” is because an appointment “in many cases” is likely to “have a terminal effect on the company’s trading life”.

56. Having considered *Re Union Accident Insurance* [1972] 1 All ER 1105, Rimer LJ concluded that a useful “working approach to the disposition of an application for the appointment of a provisional liquidator” is to ask whether the petitioner is able to demonstrate if it [77]:

“... is likely to obtain a winding-up order on the hearing of a petition”

57. The court should remember that it is not engaged in making a final decision as explained by Plowman J in *Re Union Accident Insurance*, [1110]:

“Any views I express about the matter now are of course provisional only because I am not trying the petition at the present time.”

58. In *Rochdale Drinks Distributions Ltd* Lewison LJ identified some factors to weigh when exercising the discretion [109]:

“In deciding whether to grant or refuse an interim remedy the overriding principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other. Among the matters which the court may take into account are the prejudice which the claimant may suffer if the remedy is not granted or the defendant may suffer if it is; the likelihood of such prejudice actually occurring; the extent to which it may be compensated by an award of damages or enforcement of the cross-undertaking; the likelihood of either party being able to satisfy such an award; and the likelihood that the remedy will turn out to have been wrongly granted or

withheld, that is to say, the court's opinion of the relative strength of the parties' cases: see National Commercial Bank Jamaica Ltd v Olint Corp Ltd [2009] UKPC 16; [2009] 1 W.L.R. 1405, [17], [18]..."

59. Mrs Zhang submits that the American Cyanamid test is therefore not appropriate, not least of all because of the substantial body of authority relating to the appointment of provisional liquidators. She refers to the 11th edition of Insolvency Legislation Annotations and Commentary, Doyle, Keay, Curl. The commentary to section 286 reads:
- “The requirement that an applicant must show that the appointment of an interim receiver is “necessary for the protection of the debtor’s property” has not been the subject of reported judicial analysis. It is suggested that the test must necessarily reflect the scope for the divergence of circumstances in which such an application might be made and, as such, should equate to the requirements for the appointment of a provisional liquidator under section 135 in winding up...”
60. The commentary notes that the court may appoint an interim receiver to protect a deceased person's insolvent estate. Although this is useful commentary, it may be saying no more than that contained in the Administration of Insolvent Estates Deceased Persons Order 1986.
61. Mrs Zhang submits that if one was to use the same principles as those established for the appointment of a provisional liquidator the test is (i) whether the petitioner is “likely” to succeed on the petition (ii) whether there cogent grounds to make the appointment, namely is there a risk that the assets of the debtor may not be available at the time of the final order and (iii) should the court exercise its discretion to make an order.
62. In my judgment, apart from guidance given to discretion, which may be gleaned from authorities relating to the appointment of provisional liquidators, the principles are readily identified by an objective reading of the language used in section 286 of the Act and the relevant Insolvency Rules.
63. The difference between section 135 and section 286 of the Act is that section 135 does not prescribe the criteria to be adopted by the court when considering an application for such an appointment, whereas section 286 of the Act read together with the relevant Insolvency Rules does.
64. I am conscious that by adopting a statutory interpretation to section 286 of the Act and the relevant Insolvency Rules to discern the test, there is little difference to the test that has emerged in the appointment of provisional liquidator jurisprudence. What may be distinguished is the reasoning for the appointment of provisional liquidator to a trading company, which may be and often is a public interest decision, and the reasoning required to reach the conclusion to appoint interim receivers to a deceased debtor's estate: that it is “necessary for the protection of the [deceased] debtor's property”.

65. Taking this approach, the court must be satisfied, on an application to appoint an interim receiver, that: (i) the debtor is unable to pay the debtor's debts (r. 10.51, subject to any modification made by the Insolvent Estates Deceased Persons Order 1986), which may lead to a conclusion that a bankruptcy order or appointment of an insolvency administrator is "likely", (ii) security is or will be provided, as required (r. 10.52), (iii) the appointment is "necessary for the protection of the debtor's property", and (iv) the exercise of discretion favours an appointment. In relation to (iv) the "working approach" is to ask, (as Plowman J put it, in *Re Union Accident Insurance*) whether in the circumstances of the case it is right to appoint.

Applying the principles to the facts.

Necessary for the protection of Mr Zhang's property

66. The following is known about recent dealings with assets in which the estate has an interest:
- i) The deceased's estate includes interests in operational businesses in more than one jurisdiction.
 - ii) The known businesses are conducted through private corporate vehicles.
 - iii) The corporate vehicles are incorporated in various jurisdictions.
 - iv) The only identified person who has knowledge of all the business and corporate entities is Mrs Zhang.
 - v) Mrs Zhang is likely to be a statutory beneficiary under the prevailing rules of intestacy.
 - vi) Mrs Zhang is said to be entitled to apply for letters of representation and be appointed a personal representative of the deceased's estate.
 - vii) Mrs Zhang has not taken any steps or disclosed that she has taken any steps to be appointed personal representative. She has said stated that she has no present intention of seeking such an appointment.
 - viii) There have been dealings in respect of assets in which the deceased's estate has an interest since 2020 despite it having no representation.
 - ix) More recently decisions have been made by a board of directors that include Mrs Zhang in relation to two significant assets in which the estate has an interest.
 - x) There is no visibility in relation to the dealings that affect or may affect the estate. Mrs Zhang has refused to provide information. A letter sent to the court by McDermott Will & Emery after the hearing had concluded from Cathal Lynch of Old Thorns Golf Hotel and Country Estate Limited explains that Old Thorns had a turnover of £12,868,595 in 2023 but "has for several years experienced cash flow difficulties". Cathal Lynch writes that Old Thorns has secured and unsecured loans part funded by sales from Chalet Royalp and Chateau de Turreau. The letter demonstrates the lack of visibility and raises many questions about the protection of the deceased's estate.

- xi) Mrs Zhang has not explained how any decisions she makes or decisions she is involved in are made in the best interests of estate, how she has separated any personal interest she has in defending the claims made against her personally from the interests of the estate or what, if any, safeguards are provided to protect the assets of the estate.
67. I add that Eternity Sky asked for an undertaking from Mrs Zhang not to procure, approve or otherwise seek to influence or involve herself in any decision of Dehui Limited or any of its subsidiaries without giving three business days' prior written notice. Mrs Zhang declined to give the undertaking.
68. An obvious concern for the court arises where it is not presented with all the factual circumstances. The courts are not infrequently faced with this situation. In this case the court does not know the size and extent of the deceased's estate, nor the full extent of any dealings of the estate since 2019 or the reasons for any such dealings. The court must make a value judgment on the available evidence.
69. In my judgment due to: i) the lack of visibility as to the extent and value of the estate ii) the failure to provide information and undertakings (in any form) when requested iii) post death transactions and iv) an expressed intention to continue to deal with the assets of the estate without reference to all stakeholders, I draw the conclusion it is necessary to appoint receivers for the protection of the deceased's estate. Interim receivers have the virtue of independence, to protect the assets of the deceased's estate.

The defence to the personal guarantee provided by Mr Zhang- is an administration order likely?

70. It is valuable to consider the defence Mrs Zhang advances (nominally) on behalf of the deceased estate.
71. The claim is that the personal guarantee provided by the deceased is vitiated by fraud or illegality.
72. That argument must not only grapple with the elements of fraud or illegality but that the fraud or illegality gives rise to a serious and genuine dispute to the claim on the personal guarantee, freely entered into by Mr Zhang, when he caused the company to obtain funds from the bond issue. The court is asked to infer that because Mr Zhang and Mr Lai were friends, Eternity Sky knew that the money raised by Chong Sing "lacked any commercial purpose".
73. There appears to be a disconnect between the actions of Mr Zhang, as the controlling mind of Chong Sing, owing fiduciary duties to that company, acting as trustee of the company's assets, and in possession of money raised on the bond issue, on the one hand, and on the other hand the purchase of bonds by Eternity Sky (and the assignor of the Pure Virtue debt).
74. What is known, because there is documentation to support it, is that Eternity Sky advanced the funds required to Chong Sing when it subscribed for the HKD500 million convertible bonds. The money was transferred to the bank account of Chong Sing (no other company) on 20 May 2016. Similarly, that funds were advanced by Huarong International (the Pure Virtue debt) to Chong Sing. The uncontested evidence is that Chong Sing paid the interest during the three-year contractual term and that the

performance of Chong Sing was monitored by the Huarong Group throughout, although Mr Keyte seeks to cast doubt on the depth of the monitoring.

75. Mr Keyte, in his second statement, explains that since the new evidence has been obtained, Hong Kong counsel has advised that a factual inference may be drawn that: “the conduct of Chong Sing and Eternity Sky was illegal”. It is said that expert evidence will confirm that there was a breach of Hong Kong laws and regulations. The strength of the argument is not easy to gauge from the information provided to date. Mr Keyte states: “Mrs Zhang reserves her right to identify further breaches of relevant legislation and regulations”. That may suggest that he is not confident in the breaches he relies on to date.

76. The evidence has now closed. The undisputed evidence on behalf of Eternity Sky is that an investment committee, not a single individual such as Mr Lai, made the decision to advance funds on the bond issue, that it took security from Mr and Mrs Zhang who were said to have a net worth of about 10 times the amount of funds advanced, the financial position of Chong Sing and the wealth of Mr Zhang was monitored throughout the term and prior to maturity, and other financial institutions advanced funds to Chong Sing around the same time. The material announcements, reports, circulars and financial accounts to shareholders were issued by Chong Sing (not Eternity Sky) and the warranties provided were given by Chong Sing. Mr Keyte points out in his statement that the Hong Kong Stock Exchange did publish announcements from Huarong International Finance Holdings including:

“the Directors are of the view that the terms of the Subscription Agreement which were arrived at after arm’s length negotiations between the Issuer and the Subscriber, are fair and reasonable and on normal commercial terms...”

77. The acquisition is that that Huarong International Finance knew this to be a false statement. At present it is just an allegation.

78. Mr Keyte says:

“Mrs Zhang’s case is that Chong Sing’s publicly announced profit forecast painted a false and misleadingly positive picture of Chong Sing’s financial condition”.

79. It is not hard to infer because it makes commercial common sense, that Mr and Mrs Zhang, having given personal security to Eternity Sky, were reasonably confident that the bond issue was in the commercial interests of Chong Sing and that Chong Sing as bond issuer would be capable of paying the interest during the term and capital once the bonds matured. The inference I draw from two uncontested facts: (i) Eternity Sky issued the bonds to raise money and (ii) Mr and Mrs Zhang were prepared to provide personal security for the funds advanced.

80. In *Rochdale Drinks Distributions* Rimer LJ repeated what is well-known in the Companies Court and will be well-known to the parties before me [80]:

“It is not sufficient for the company merely to raise a cloud of objections. It has, in the old-fashioned phrase, to condescend to

particulars by properly explaining the basis of the claimed dispute and showing that it is a substantial one. If, despite the company's protestations, the alleged dispute can be seen on the papers to be no dispute at all, or to be no dispute as to part of the debt, the petition will ordinarily be allowed to proceed.”

81. In that case the appellate court heard argument about whether it was possible to determine (on the papers) allegations of fraud (and forgery) so as to decide, in the summary way required, the appointment of a provisional liquidator. Mr Justice Peter Smith thought it could not since “allegations of this seriousness, of forgery and fraud, have to be established to a high standard”. The Court of Appeal decided that the judge’s approach was wrong. Evidence of fraud needs to be genuine.
82. I am conscious that the arguments of fraud (or illegality) were not fully explored before me and remind myself that any view I express about the strengths of the case are provisional only: I am not trying the petition. Given the state of the evidence, I am of the view that although a defence has been raised it fails to meet the threshold of serious and genuine. The documentary evidence points in the direction of a finding that Eternity Sky acted at arms-length in respect of the bond issue and any actions taken by Mr Zhang that may have fallen foul of local laws does not affect the fact of: (a) the bond issue, (b) the advancement of funds on the issue of bonds or (c) the obligation to repay the funds in accordance with the contractual documentation. If Mr Zhang decided, of his own volition, to use the funds raised to purchase a premiership football team that would not vitiate the personal guarantees. On this basis I find it is likely that an administration order will be made.

Solvency

83. I have referred [paragraphs 43-48] to the evidence produced by Eternity Sky in respect of solvency. The evidence supports the contention that Mr Zhang’s estate is insolvent.
84. Eternity Sky and Pure Virtue are owed in the region of £145,392,476.30. The demands by Eternity Sky and Pure Virtue have not been met. The value of the estate, according to Sha Tao, is put at £70,502,260.40 “plus any additional value in Mr Zhang’s estate’s 50% beneficial interest in the shares of the BVI Companies which has not already been taken into account.”
85. It is believed that the British Virgin Island companies have value, but that value is uncertain and other parties have an interest in these companies. In any event the evidence of Sha Tao is that the total value of assets is less than the total liabilities which, when taking account of other debts owed to the Haurong Group is estimated to be £273,878,217.04.
86. In a case where there is a lack of transparency indirect factors may point toward an insolvent estate. First, it is to be acknowledge that a failure to pay the demands made under the personal guarantees may be for many reasons such as delay on behalf of Eternity Sky (Covid-19 may have intervened), the death of Mr Zhang and the failure of Mrs Zhang to take control of the deceased’s estate. Mrs Zhang has also been occupied defending claims against her assets. Nevertheless, the sums became due over 4 years ago and remain unpaid.

87. Secondly, Mrs Zhang has been accused of meddling in the deceased's estate and not taking letters of representation. For the purposes of this hearing, I draw an adverse inference that her reluctance to take letters of administration is due to the estate's insolvency.
88. For the purposes of today, the evidence of Sha Tao is not contested (I recognise submissions are likely to be made at the hearing of the petition that may cast doubt on this evidence), that the estate is balance sheet insolvent. The capital sums due on the convertible bonds has not been paid and the demands under the personal guarantees have not been met. I conclude that the deceased's estate is insolvent on a balance sheet and cash-flow basis.

Discretion

89. In exercising the discretion, I am concerned with the overriding principle that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other.
90. Mrs Zhang says that the estate of Mr Zhang will suffer prejudice. Two main grounds of prejudice are relied upon: (i) disruption to the operating businesses in which the estate has a significant interest; (ii) the hefty costs and expenses that would be paid to an interim receiver.

Disruption

91. No evidence has been produced to demonstrate disruption to the assets of Mr Zhang's estate. The premise of the disruption argument is that the interests of the deceased's estate are bound up with shares issued by operating companies to Mr Zhang during his lifetime. In argument Mrs Zhang referred to the company Old Thorns as being an operating company that will face prejudice. A letter sent by the managing director of Old Thorns dated 26 October 2023 (after the hearing) states:
- “The putative interim receivers would, if appointed, have extensive investigatory powers and be in a position to exercise the rights of the ultimate shareholder of Old Thorns.”
92. The use of adjectives does not assist an understanding of likely prejudice, but in any event the powers of an interim receiver are those powers provided by the court. They need not be the default powers.
93. Mr Lynch says he is unable to quantify the amount of loss that may arise if appointed interim receivers become “extremely disruptive”, as he puts it. He therefore speculates that the secured lenders of Old Thorns and the unsecured lenders are “highly likely” to “reassess their position” if receivers are appointed.
94. I am unable to lend great weight to the letter given how it has reached me and given that Mrs Zhang is also director of Old Thorns. Eternity Sky has previously expressed concern that Mr Lynch maybe influenced by Mrs Zhang. In any event the letter lacks particularity. There is no suggestion that the applicable loan facilities include an insolvency event, or a provision that triggers default, due to the appointment of an

interim receiver to a deceased's estate of a shareholder, and no evidence that the lenders will seek to withdraw their facilities.

95. The "disruption" argument seems to go no further. In submissions, Mrs Zhang accepted that the consequences of an appointment are very difficult to foresee. I have little doubt that there is potential for some increased work for the management of the businesses if an interim receiver is appointed over a shareholder's assets. Such disruption (the receivers asking the management for information) can be contrasted with the type of prejudice that may arise on the appointment of a provisional liquidator to a trading company. The appointment of a provisional liquidator ousts the directors, a business maybe shut down, employees may lose their jobs (and they can take no comfort from a cross-undertaking) and the books and records of the once trading company maybe lost to the appointed provisional liquidator.
96. There have been dealings with the estate of the deceased, dealings are anticipated to continue, no person has taken responsibility for the estate, large debts are owed and there is little or no transparency in respect of the current assets and liabilities.
97. Although it is said that no urgency arises, the cumulative disposals increase the concern that the deceased's estate is reducing in size and value. If that is the case, creditors hold a legitimate concern to protect the estate.
98. There is an issue of the directors or Mrs Zhang inadvertently or purposely dealing with an insolvent estate. It has been said that extreme caution is to be exercised by those dealing with deceased estates that have doubtful solvency: *Williams v Lawrence* [2011] BPIR 1761. This is partly due to the relation-back provisions that apply to deceased insolvent estates but there may be other insolvency laws that apply differently in different jurisdictions.
99. As well as protecting the assets of the deceased estate, the appointment of interim receivers may provide protection of sorts for those involved in the corporate governance of corporate bodies in which the deceased holds an interest, if a dealing is done with the oversight and agreement of receivers.
100. In these circumstances the prejudice of a failure to protect by appointment it is greater than the potential prejudice to the estate of not appointing an interim receiver.

Receivers' costs

101. Mrs Zhang argued that expert evidence should be ordered given the importance to the parties and the high value of the estate of the deceased. Having succeeded on that argument Mrs Zhang argues that the costs of interim receivers are likely to be prejudicial to the deceased's estate. The costs and expenses will be relative to the work undertaken and to some extent that will depend upon the cooperation of Mrs Zhang and others involved in the various businesses, in which the estate has an interest.
102. If the argument is that no costs should be expended on interim receivers, the argument must fail since interim receivers are entitled to remuneration for the work done. If it is said that they are too high, the argument is premature.

103. Since the hearing concluded, Mrs Zhang and Eternity Sky have sent written submissions to the court regarding cross-undertakings. Mrs Zhang claims to have been ambushed by a late offer to provide a cross-undertaking and Eternity Sky claims that the lateness of the offer should not detract from the offer itself. I shall deal with that below. As part of those written submissions, Eternity Sky has estimated, by asking the proposed officeholders, that the remuneration and costs between the date of appointment and the hearing of the administration petition are likely to be between £80,000 and £140,000 plus VAT. That is said to be a reasonable estimate. This cost is not, in my judgment, so disproportionate to act as a brake on the appointment by outweighing the necessity for protection.
104. In any event remuneration of interim receivers is governed by the 2016 Insolvency Rules r10:53: it must be fixed by the court. Although this will not allay fears of high costs, the deceased's estate is able to take some comfort from the scrutiny applied by the court.

Cross undertaking in damages

105. The “ambush” objection taken by Mrs Zhang has an air of unreality. At the end of the hearing on 20 October 2023 and, following the submissions made by Mrs Zhang that there was no good reason for Eternity Sky to object to the giving of a cross-undertaking in damages, and undertake to pay the costs of the receivers if the petition is dismissed, Eternity Sky offered an undertaking in the usual form. In my judgment, late in the day though it is, it would be contrary to the overriding objective to dismiss or adjourn to a further hearing the application for an interim receivership on the basis that Eternity Sky had conceded the point argued and offered an undertaking.
106. The undertaking produced to me at the hearing reads:
- “If the Court later finds that this Order has caused loss to the Estate, and decides that the Estate shall be compensated for that loss, Huarong Asset Management shall comply with any order the court may make.”
107. This is the form of undertaking Mrs Zhang said, in submissions, was needed. In my judgment the form of undertaking is appropriate and acceptable.
108. Mrs Zhang submitted that because Chong Sing was in liquidation and there were financial difficulties with other companies the undertakings should be fortified. In my judgment the submission conflates the trading companies and the shares vested in the deceased's estate. They are not the same thing. The identifiable exposure to loss is: i) the cost of the officeholders appointed in the interim period ii) negligence or other mistaken conduct by the officeholders that causes loss to the deceased's estate and iii) the unparticularised risks raised by Mr Lynch. The third of these feeds into the submission made by Mrs Zhang that the interim receivers could use their voting rights attached to the shareholding to block executive decisions. The executive directors are likely, depending on local laws, to be given the general powers required to carry out the corporate governance of a company without the interference of the shareholders. It is only if the contract between the company and the shareholders requires a vote that the shareholders would be able to block any executive-controlled agenda. It is not unreasonable to infer that this would occur in unusual and not everyday circumstances.

Nevertheless, the potential for, as Mrs Zhang put it, action or inaction “genuinely but mistakenly” taken is real even if the circumstances are difficult to envisage (on the basis that the executive is acting within its powers and complying with its duties to the trading entity).

109. The consolidated account of China Huraong Asset Management Co Ltd shows a strong asset position. I do have a concern that the financial information relied on is contained in an annual report dated 31 December 2022. This is nearly a year old. The court requires a statement to be filed exhibiting the consolidated report and an up to date current net asset and cash position before the order is sealed.
110. Having full regard to the potential for loss caused to the estate, the nature of the estate and the arguments advanced by Mrs Zhang I am of the view that £500,000 is a proportionate sum to be paid into court to fortify the undertaking.

Conclusion

111. The application for the appointment of receivers over the estate of the deceased has been made out. The debtor is unable to pay the debtor’s debts and the appointment of an insolvency administrator is “likely”. Security has been offered in accordance with r 10.52 of the Insolvency Rules. The appointment is “necessary for the protection of the [deceased] debtor’s property”, and the exercise of discretion favours an appointment.
112. The cross-undertaking offered answers many of the criticisms made by Mrs Zhang in submissions made on 20 October 2023.
113. The cross-undertaking is offered in the usual form and although given late in the day it is disproportionate to incur further costs when the form of the undertaking, together with fortification, is reasonable and proportionate.
114. I shall hear submission on the extent of the powers to be given to the nominated officeholders.