

Neutral Citation Number: [2019] EWHC 2904 (Ch)

Case No:CR-2019-MAN-000989

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS IN MANCHESTER**  
**INSOLVENCY AND COMPANIES LIST**

In the Matter of Paperback Collection and Recycling Limited  
And in the Matter of the Insolvency Act 1986

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

Date: 30<sup>th</sup> October 2019

**Before :**

**His Honour Judge Halliwell sitting as a Judge of the High Court**

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**Between :**

**(1) Christopher Ratten**  
**(2) Lindsey Cooper**

**Applicants**

**- and -**

**Natural Resource Body for Wales**

**Respondent**

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**Miss Lesley Anderson QC** (instructed by **Taylor's Legal Services**) for the **Applicants**  
**Mr Chris Stables** (instructed by **Natural Body for Wales**) for the **Respondent**

Hearing date: 25<sup>th</sup> October 2019  
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**APPROVED JUDGMENT**

**HHJ Halliwell:**

***(1) Introduction***

1. The Applicants are the joint liquidators of Paperback Collection and Recycling Limited (“the Company”) which was placed in creditors voluntary liquidation on 25<sup>th</sup> June 2018. They seek an order staying criminal proceedings (“the Criminal Proceedings”) against the Company in the Caernarfon Magistrates

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Court. The Respondent (“NRW”) is a Welsh Government sponsored body with regulatory responsibilities in relation to the management of natural resources. It commenced the Criminal Proceedings in the Caernarfon Magistrates Court on 1st August 2019.

2. I must first address the jurisdiction of this Court to stay proceedings in the criminal courts under *Part IV* of the *Insolvency Act 1986*. I shall then examine the principles governing the exercise of such jurisdiction.
3. Before me, Miss Lesley Anderson QC appeared on behalf of the Applicants and Mr Chris Stables appeared on behalf of the NRW.

**(2) Factual background**

4. Prior to liquidation, the Company was in the business of treating and disposing of waste materials from properties at Units 1, 1A and 2 Parkway, Deeside Industrial Park, Deeside and Penrhos Works, Holyhead, Anglesey. It held the properties under leases. NRW maintains that the Company committed multiple breaches of the conditions under which it was permitted to store waste at Deeside Industrial Estate and unlawfully stored some 8,686 tonnes of baled waste at Penrhos Works.
5. On 6<sup>th</sup> June 2018, NRW served on the Company statutory notice, under *Section 59* of the *Environmental Protection Act 1990*, in relation to the Penrhos Property requiring removal, by 15<sup>th</sup> October 2018, of the waste unlawfully stored there. It did not serve such a notice in respect of the Deeside Property but maintains that it identified significant waste related offences at that site.
6. Following liquidation, the Applicants served notices of disclaimer in relation to the Deeside and Penrhos leases under the provisions of *Section 178* of the *Insolvency Act 1986* and, subsequently, the waste stored at each property.
7. There is an Estimated Outcome Statement showing that, as at 30<sup>th</sup> September 2019, assets had been realised in the sum of £409,891. However, the estimated shortfall to secured creditors is some £438,995 and the outstanding indebtedness to unsecured creditors amounts to £1,090,117.

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8. The Company is being prosecuted with its directors, Mr Gordon Pearson Anderson and Ms Terry Eleanor Anderson, for a series of offences under *Sections 33(1)(b) and (6) of the Environmental Protection Act 1990 and Regulation 38(1)(a) and (2) of the Environmental Permitting (England and Wales) Regulations 2016* in connection *inter alia* with the management of controlled waste and breaches of the conditions of the Company's environmental permits.
9. On behalf of NRW, Mr Justin Edward Amos, a barrister in the employment of NRW, has made a witness statement with the following observations about the alleged offences.

“(22) The Respondent regards the offences by the Company and its directors at the Penrhos and Deeside sites as involving serious environmental offences. The alleged offences involve very substantial quantities of unlawful deposits of waste at Penrhos (estimated 8,686 tonnes) and the Company's permitted facility in contravention of environmental permit conditions at the Deeside site (over 14,800 tonnes at date of entering liquidation). The activities giving rise to the offences were carried out on a commercial basis-with payments over £2 million being received for the treatment of waste involved in the offending during the period of offending-and the Respondent identified that the Company and its officers derived financial benefit from these activities without complying with the regulatory environmental regime.

(23) The Respondent's assessment of the 'culpability' of the Company is that the offences were committed deliberately. The Company intentionally produced ('treated') baled plastic waste which was given waste code EWC 19 12 04 plastic and rubber [wastes from the mechanical treatment of waste (for example, sorting, crushing, compacting, palletising)] at the regulated facility at its Deeside site. This waste was generated from recovery of waste the Company had accepted from other waster operators in the United Kingdom, in return for which the Company was paid substantial sums. NRW's financial investigator calculated the Company received £2,132,334.66 in the period February 2017 to February 2018, including payments totalling £1,218,579.67 from its principal customer UPM Kymmene (UK) Ltd based in Shotton, Flintshire. Whilst the Company was authorised under the environmental permit conditions to produce such baled plastic waste, it did not have authorisation to store it at the Deeside site other than through an S2 waste exemption (limited to 500 tonnes for up to 12 months). The Company generated over 9,000 tonnes of this waste with knowledge it did not have authorisation to store it and there was no lawful outlet for it at the material times.

(24) The Respondent regards the victims in this case to be the owners of the land at the Penrhos site and the permitted facility on Deeside. The financial impact on the land owners is considerable. The cost of clean-up of the Penrhos site has, depending on recovery or disposal

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route taken, been estimated as between £781k and £1.146m. The cost of clean-up of the permitted Deeside site has been commenced by the landowner and been underway for some time and is estimated in the region of around £2m”.

10. These allegations are plainly of a serious nature. Whilst not yet tested in court, the Criminal Proceedings are founded, in part, on such allegations. It is on that basis that NRW seeks to pursue its prosecution of the Company.
11. The Criminal Proceedings are at a formative stage. Mr Stables advised me that they are listed for hearing before the Caernarfon Magistrates Court shortly when the defendants will be asked to enter a plea. Although they have not yet given any indication how they might plead, the offences are triable either way and Mr Stables confirmed that the Criminal Proceedings will almost certainly be moved to the Crown Court at Mold.

**(3) Jurisdiction**

12. The High Court is a superior court of record. By virtue of *Section 19(2)* of the *Senior Courts Act 1981*, it has all such jurisdiction as is conferred by statute and “all such other jurisdiction (whether civil or criminal) as was exercisable by it immediately before the commencement of this Act”. This subsumes and incorporates the inherent jurisdiction of the court. By *Section 29(1)* of the *1981 Act*, the High Court has jurisdiction to make mandatory, prohibiting and quashing orders in those classes of case in which, immediately before 1<sup>st</sup> May 2004, it had jurisdiction to make orders of *mandamus*, *prohibition* and *certiorari*.
13. The Crown Court is itself a superior court. However, *Section 29(3)* provides that “in relation to the jurisdiction of the Crown Court, other than its jurisdiction in matters relating to trial on indictment, the High Court shall have all such jurisdiction to make mandatory, prohibiting and quashing orders as the High Court possesses in relation to the jurisdiction of an inferior court”.
14. In the present case, it was not suggested that the High Court has an inherent jurisdiction to *stay* criminal proceedings in the Magistrates Court or the Crown Court. To succeed in their application, the Applicants must thus rely on the Court’s statutory jurisdiction. On their behalf, Miss Anderson submitted that, in the present case, such jurisdiction is conferred by the provisions of *Section*

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112(2) of the *Insolvency Act 1986*. In support of her submissions, she referred me to the provisions of *Section 112(1), (2)* and *Section 130(2)* of the *1986 Act* and the judgment of the Court of Appeal in *R v Dickson [1991] BCC 719*.

15. *Section 112(1)* provides that “the liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court”. By *Section 112(2)*, “the court, if satisfied that the determination of the question or the required exercise of the power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks fit”.
16. *Section 130(2)* provides that “when a winding up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company or its property, except by leave of the court and subject to such terms as the court may impose”. In the light of *R v Dickson (supra)*, Miss Anderson submitted that “action or proceeding” is to be construed widely so as to encompass criminal proceedings. Whilst she accepted that there has been no winding up order in the present case-the Company is in voluntary liquidation-Miss Anderson submitted that, in the exercise of my statutory powers under *Section 112(2)*, I thus have jurisdiction to make an order staying the Criminal Proceedings.
17. Mr Stables did not challenge my jurisdiction to make an order staying the Criminal Proceedings. However, it is axiomatic that I must address this issue first.
18. I have reached the conclusion that, whilst it would be open to me to make an order restraining NRW from pursuing the Criminal Proceedings, I do not have jurisdiction to order a stay. I have done so on the following basis.
19. Firstly, it is self-evident, when *Section 112(1)* and *(2)* are construed together, that they confer on the Court the same jurisdiction and powers in respect of a company in voluntary liquidation as it has in respect of a company being

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wound up by the Court. This includes the statutory powers in *Section 126(1)* to stay or restrain court proceedings.

20. Secondly, there is now a long line of authority for the proposition that, under this statutory regime, “proceedings” is to be construed so as to include criminal proceedings. This authority can be traced back as least as far as *Re Briton Medical and General Life Assurance Life Assurance Association (1886) 32 Ch D 503*, in which Kay J concluded that his statutory jurisdiction in *Section 85* of the *Companies Act 1862* to restrain proceedings pending the hearing of a winding up petition encompassed proceedings in the magistrates court for the recovery of penalties under the *1862 Act*. *Re Briton (supra)* was among the authorities cited by Slade J *re J Burrows (Leeds) Ltd [1982] 2 AER 882*, when accepting a concession that proceedings in the Leeds Magistrates Court qualified as a “proceeding” within the meaning of *Section 226(b)* of the *Companies Act 1948*. *Section 226(b)* can thus be taken to have conferred jurisdiction on the Court to restrain further proceedings after presentation of a winding up petition. In *R v Dickson [1991] BCC 719*, Leggatt LJ thus pronounced himself “content to assume that leave was required...before criminal proceedings could lawfully be instituted” against a company for supplying goods to which a false trade description was applied. This line of authority is consistent with the Court of Appeal’s approach to the requirement for leave in respect of companies pending administration. In this context the Court of Appeal, in *re Rhondda Waste Disposal Ltd [2001] Ch 57*, had little difficulty construing a statutory prohibition on “other proceedings” so as to include criminal proceedings.

21. However, *Section 126(1)* of the *1986 Act* is in the following terms

“*126 (1)* At any time after the presentation of a winding-up petition and before a winding-up order has been made, the company, or any creditor or contributory, may-

- (a) where any action or proceeding against the company is pending in the High Court or Court of Appeal in England and Wales or Northern Ireland, apply to the court in which the action or proceedings is pending for a stay of proceedings therein; and
- (b) where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding;

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and the court to which application is made may (as the case may be) stay, sist or restrain the proceedings accordingly on such terms as it thinks fit”.

22. *Section 126* thus provides for a company to apply to the court in which the proceeding is pending for a *stay* of such proceedings. It also provides for the company to apply to “the court having jurisdiction to wind up the company to *restrain* further proceedings in the action or proceeding”. On such an application, the relevant court can “(as the case may be) stay...or restrain the proceedings”. However, the statutory power specifically accommodates the application. In my judgment, no statutory power is thus conferred on the Court to intervene in proceedings before another court so as to impose a stay.
23. Consistently with these principles, the High Court has repeatedly demonstrated a readiness to grant relief restraining creditors from pursuing proceedings in other courts against companies in liquidation. For example, in *re Briton (supra)*, Kay J made an order in the Chancery Division of the High Court restraining a creditor from issuing magistrates court summonses against the company following presentation of a winding up petition and, in *re International Pulp and Paper Co (1876) 3 ChD*, Jessel MR made an order restraining a creditor from continuing proceedings in the Irish courts against a company that had been wound up in London.
24. I was not referred to any case in which the High Court has stayed proceedings in other courts in the exercise of its insolvency jurisdiction. Slade J was content to assume, in *re J Burrows (Leeds) Limited [1982] 2 AER 882*, that he had jurisdiction, when sitting in the High Court, to stay proceedings in the Leeds Magistrates Court in respect of a company in voluntary liquidation. However, it appears from his judgment that the Court’s jurisdiction to stay proceedings was undisputed and, ultimately, he declined to order a stay in the absence of “sufficient grounds” to do so. In the absence of binding authority, I am not satisfied I have jurisdiction, in the present case, to make an order in this Court staying the Criminal Proceedings.

**(4) Discretion**

25. If I am wrong in concluding that I lack jurisdiction to stay the Criminal Proceedings, it may assist the parties for me to indicate how I would be

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mind to exercise my discretion. In view of the fact that the Applicants do not currently seek an order restraining NRW from pursuing the Criminal Proceedings it would be inappropriate for me to reach a definitive conclusion on the merits of such an order at this stage. However, subject to additional argument and evidence, my current views about the merits of such an order are closely aligned with my views in relation to the correct exercise of my discretion on the application for a stay.

26. The statutory jurisdiction of the Court, under *Section 130(2)* of the *Insolvency Act 1986*, to grant leave to a creditor to commence or proceed with an action against a company in compulsory liquidation is obviously distinct from its jurisdiction to stay or restrain proceedings under the exercise of its statutory jurisdiction in *Section 112(2)* and *126(1)* of the *Act*. However, as Brightman J recognised in *re Aro Ltd [1980] Ch 196*, the applicable principles are closely analogous.
27. A stay is imposed or proceedings restrained to ensure that the assets of the company are administered in an orderly fashion for the benefit of all its creditors as a class and prevent particular creditors from obtaining an advantage by bringing proceedings against the company, *Langley Constructions (Brixham) Ltd v Wells [1969] 1 WLR 503 (Widgery LJ)*. Consistently with these propositions, Patten LJ has more recently observed, in *Gardner v Lemma Europe Insurance [2016] EWCA Civ 484*, at *Para 2*, that “the imposition of an automatic stay is designed to avoid the unnecessary expenditure of assets otherwise available for distribution amongst creditors and to support the replacement of a creditor's right to establish a claim by judgment in an action with a right to lodge a proof of debt. This process is inherently less expensive and carries with it a right of access to the Companies Court in the event that the proof is rejected: see Rule 4.83 of the IR 1986. Consistently with this, leave to commence proceedings will only be granted by the court when it is right and fair to do so in all the circumstances and is unlikely to be granted where the issue in the action could be dealt with as conveniently in the liquidation as in other proceedings...” A stay protects the assets available to the Company's creditors as a whole and the courts are



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astute to prevent the issue and pursuit of proceedings for the determination of issues which can properly be determined in the winding up.

28. There is, of course, no suggestion in the present case that NRW is a creditor of the Company or, indeed, that it is prosecuting the Company in order to establish rights that it might have as a creditor.
29. In re *Rhondda Waste Disposal Ltd* [2001] Ch 57, the Environment Agency sought to prosecute a company for failure to comply with the conditions of a waste management licence issued by the Agency. After the company was placed in administration, HHJ Moseley QC adjudged that the Agency required leave to prosecute the company under *Section 10(1)(c)* of the *Insolvency Act 1986* and declined to give leave after referring to the principle, in bankruptcy cases, that leave should only be given to pursue civil proceedings if there was no prejudice to the creditors or it was consistent with the orderly administration of the bankruptcy. He observed that any fine could only be paid at the expense of the creditors.
30. The Court of Appeal allowed the Environment Agency's appeal of the exercise of the Judge's discretion on the basis he had misdirected himself by elevating the interests of the creditors above all other considerations and failing to take into account or give sufficient weight to evidence adduced by the Agency. This included evidence that the Agency had a published policy as to the circumstances in which it would bring criminal prosecutions, the company had consistently been in breach of its licence conditions and there was considerable local concern about the harm that had been caused to the environment. In electing to re-exercise the Judge's discretion so as to give the Agency leave to prosecute, it is at least implicit that the Court of Appeal were particularly mindful of the wider public interest and the seriousness of the allegations.
31. The statutory regime for the imposition of a stay under *Section 112(2)* and *126(1)* of the *Insolvency Act 1986* is distinct from the statutory regime, previously contained in *Section 10* and *11* of the *1986 Act* for the grant of leave in respect of a company pending administration or, subsequently, in administration. However, the underlying principles are similar.

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32. In the present case, as in *Rhondda Waste Disposal (supra)*, the Company is likely to incur significant costs if it chooses to defend the Criminal Proceedings. If successfully convicted, there is also a risk that it will be fined. Such fine may be substantial although the ability of a company to satisfy a financial penalty is a relevant factor, on sentence, under *Section 164* of the *Criminal Justice Act 2003* and Step Four of the *Sentencing Guideline*. These considerations will obviously be to the disadvantage of the Company's creditors.
33. However, the Criminal Proceedings are not being brought to advance the interests of one or more creditors at the expense of other creditors. They are not inimical to the orderly management of the liquidators' functions save to the extent they involve the consumption of time and expense which arises directly from the prosecution of the alleged offences. Moreover, the Criminal Proceedings do not raise issues more suitable for the convenient determination of the liquidators themselves.
34. Conversely, in my judgment, there are compelling public interest grounds to allow the Criminal Proceedings to continue. These substantially outweigh the attendant disadvantage to the creditors.
35. Firstly, the alleged offences are of a serious nature (See Paragraph 9 above). It is in the public interest for such offences to be prosecuted and to be seen to be prosecuted. It is true that the Company's directors, Mr Gordon Anderson and Ms Terry Anderson, are also being prosecuted. However, in itself, that is no good reason for the Company to avoid prosecution.
36. Secondly, as Mr Amos has observed in his witness statement, it is an important part of NRW's case that the Company's unlawful activities significantly undermine the regulatory regime.
37. Thirdly, NRW has brought the prosecution under an open policy published in the *Environmental Permitting (England and Wales) Regulations 2016*. When deciding to prosecute the Company, it took into account *inter alia* the seriousness of the offences, the actual or potential harm to the victims and the impact on the community. It also considered whether prosecution was proportionate.

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38. Fourthly, in the event that the Company is convicted, the officers of the Company could be precluded from holding an environmental permit in the future.
39. In his submissions before me, Mr Stables also submitted that, in the event the Company is convicted, the Crown Court may proceed to make a confiscation order. If so, he submitted that at least some of the proceeds could be credited to the site owners as victims. However, this consideration involves a measure of speculation. Moreover, if such compensation would be for monies to which they have already submitted a claim in the liquidation, the liquidators will no doubt maintain this can more conveniently be dealt with in the liquidation itself.
40. Nevertheless, I am satisfied that, if I have jurisdiction to stay the Criminal Proceedings, I should decline to do so. The Application is dismissed.