



Neutral Citation Number: [2020] EWHC 3139 (Ch)

No. CR-2020-004167

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

IN THE MATTER OF SKY BUILDING LIMITED
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Remote Hearing (Teams)
Date: 20/11/2020

Before:

I.C.C. JUDGE JONES

BETWEEN:

(1) SKY BUILDING LIMITED

(2) CRAIG JOHNS AND JASON ELLIOTT (as proposed Joint Administrators)

Applicants

- and -

(1) HM REVENUE AND CUSTOMS

(2) SANDRA TO AND OTHERS

Respondents

Bridget Williamson (instructed by **JMW Solicitors LLP**) for the **Applicants**
Steven Fennell (instructed by **Bermans (2012) Limited**) for the **Second Respondents**

Hearing dates: 13 and 18 November 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

..... CHJ – 20/11/20

I.C.C. JUDGE JONES

I.C.C. Judge Jones:

A) The Application

1. The application first before the court on Friday 13 November 2020 raises two separate issues. Whether an administration order should be made in respect of Sky Building Limited (“the Company”) and, if so, whether an order should be made under *paragraph 71 of Schedule B1 of the Insolvency Act 1986* (“*paragraph 71*”) to enable administrators to sell the development property in issue as though it is not subject to purchasers’ liens resulting from the exchange of contracts for the grant of long leases over flats to be built. It is unclear whether any of the flats have been built but the development is only 60% complete.
2. The position is complicated by the fact that the property is currently owned by another company, Sky Apartments 2018 Limited. The two companies are unconnected in terms of shareholdings and officers and have different interests. The reason the issues arise is that there are contractual agreements in place which will potentially achieve the transfer of the property to the Company subject to the liens. That will only occur, however, if the Company is in administration and an order is made under *paragraph 71* to enable a back to back sale as if the property is not subject to the purchasers’ liens.
3. A further complication is that not all the purchasers’ liens, a form of equitable charge, are protected by registration of Notices (“the Notices”) under *the Land Registration Act 2002* against the property’s title. Entry of a Notice, assuming the interest to which it relates is valid, confers priority on the interest in the event of a registrable disposition for value of the registered estate or charge that it burdens. However, a Notice must be registered to achieve that. It is estimated the Notices secure liabilities in the region of £6.5 million.
4. Another complication is that there are other secured creditors (for convenience I will call them “the Riley Creditors”). They have a registered charge against the property to secure lending used for the project. It secures about £2,747,000. However, it was registered after and, therefore, ranks below the Notices. Despite that, the consideration for the transfer to the Company, derived from the money to be received from the Company’s back to back sale, will discharge that charge. The transfer to the Company will be subject to the Notices only.
5. Therefore, the practical position is that the sale and sub-sale cannot be achieved without the consideration to be paid by back to back purchaser, redemption of the Riley Creditors’ charge and a *paragraph 71* order. If they are achieved, the Company will net a sum of £600,000 for distribution to those with a purchaser’s liens. There will be no distinction drawn by the administrators between those with Notices and those without on the basis that the Company is bound by all the liens through privity of contract. Valuation evidence from the Company is that £600,000 represents market value for the sale of the freehold title subject to existing leases but without any encumbrance in the Charges Register.

B) 13 November 2020 Hearing

6. The application was heard in the urgent list on Friday 13 November. Two reasons were provided for urgency. First, that from 14 November the Riley Creditors could enforce their charge and obtain significant leverage. Second, that the contracts expired on Friday 20 November 2020.
7. The application was opposed by approximately 65% of those with purchaser's liens represented through Mr Bagnall by "the Group Steering Committee". This also presents another problem. It is unclear the extent to which those purchasers know or understand what is happening. That is attributable to short service both in regard to Friday's hearing and today, although the substance of what is intended was disclosed in a solicitor's letter dated 27 October 2020. It is also unclear, and I intend no criticism of this, whether all of them understand the position taken by "the Group Steering Committee"
8. In addition, it is to be noted that no distinction is being drawn by either side between those with and those without Notices. That is on the basis, as I understand it, that all will share in the distribution or benefit from the alternative build out scheme being investigated by "the Group Steering Committee".
9. There was an extant winding up petition presented by the Commissioners for Her Majesty's Revenue and Customs. It has been adjourned on many occasions. They did not attend and did not oppose the relief sought.
10. I delivered an oral judgment on Friday evening which sets out in some detail the background to the applications before me. I made an administration order to take effect upon the proposed appointees signing new letters of consent, if so advised. I did so, in summary, because I was satisfied the requirements of *paragraph 11 of Schedule B1* were met. That included my conclusion that it was "reasonably likely" that an order under *paragraph 71* would be made. That, as I stressed, did not mean one would be made. Only that a real prospect test has been satisfied. A "new" decision whether to make the order must still be made.
11. I would not reach that decision that evening. In summary, I did not consider it right to reach a decision in the context of inadequate notice having been given to those whose property rights will be affected if an order is made. I was not persuaded that I should do otherwise because the Riley Creditors would have the right to take possession of the Property as mortgagees from Saturday. I did not consider that a sufficient problem to justify having to make a *paragraph 71* decision as urged. Indeed, it threw light on the important fact that as mortgagees in possession the Riley Creditors would need to account for the net proceeds of sale to those with prior registered Notices securing a purchaser's lien.
12. Instead, I adjourned the *paragraph 71* application to enable meetings to occur between the administrators and "the Group Steering Committee". This was necessary for commercial reasons. It made sense for them to discuss their concerns with the administrators and to raise their alternative proposals. It would be entirely consistent with the fact that the administrators would be acting in their interests (see *paragraph 3(3) of Schedule B1*).

13. The current position may be summarised without reference to detail as follows: the administrators took office; discussions have taken place and alternative schemes have been proposed by “the Group Steering Committee”; there was no agreement; and the administrators raise the concern that it is unclear how many lien holders were being represented.

C) This Hearing

14. I now need to decide *the paragraph 71* application and, if appropriate, whether the administration order should stand. Although my judgment on 13 November sets out the background facts in some detail, I should in this judgment repeat certain key features and provide a summary of the key contracts.

C1) Key Features and Contracts

15. The key features are:
- a) Between January 2016 and May 2018 the Company was developing the property it then owned, Jubilee Baths, Brunswick Street, Newcastle-under-Lyme. It had granted leases for 145 flats and exchanged contracts for the grant of leases for 143 flats being built to provide an investment opportunity from student sub-lettings.
 - b) By May 2018 the Company had serious financial difficulties. Re-financing by the Riley Creditors included terms that resulted in: (i) the freehold being transferred to Sky Apartments (2018) Limited; (ii) Mr Riley having a debenture over that company and the Riley Creditors being granted a charge over the property; and (iii) the Company having an option to buy back the property for the same price as that stated for the transfer.
16. The contracts and matters relevant to them can be summarised as follows:
- a) The first, replacing a contract dated 5 November 2020, is a contract made on 10 November 2020 between Sky Apartments (2018) Limited and the Company under which the Company is to purchase the freehold title of the property in issue for £2,747,000. By clause 8 title to the property will be transferred subject to the purchasers’ liens.
 - b) Completion of this purchase on 20 November 2020 is conditional upon four requirements: (i) administrators are appointed over the Company; (ii) an order is made under paragraph 71 of Schedule B1 for the Company’s sub-sale of the property to Daisy Property Investments Limited as though it is not subject to the equitable liens; (iii) the Company has funds from its proposed sub-sale with which to pay the purchase price; and (iv) the Company has received £68,000 from Daisy Property Investments Limited. A deposit of £1 million was paid.

- c) There is an issue in that the Company is described as acting by its administrators. The “administrators”, Mr Elliott and Mr Johns, were joined as parties in their own right. As at 10 November 2020 the Company had no administrators. However, I do not consider that a significant issue. Completion cannot be effected until administration and the administrators will adopt the contract on behalf of the Company when appointed if it is to proceed. Permission under *paragraph 71*, should it be granted, can be ordered to take effect upon completion of the first contract, should that occur.
 - d) The second contract, also dated 10 November 2020, is a back to back, sub-sale of the property to Daisy Property Investments Limited. It supersedes a contract dated 5 November 2020. The consideration is £3,347,000. A £1 million deposit has been paid. The completion date is now extended to 20 November 2020. Completion is conditional upon the appointment of administrators and an order under *paragraph 71* removing the security of all with purchasers’ liens.
 - e) The contract requires the Company (clause 15) to “take a transfer of the Property from [Sky Apartments 2018 Limited] at the purchase price [£2,747,000] and simultaneously transfer the property to Daisy Property Investments Limited”.
 - f) At the time of the sub-sale Daisy Property Investments Limited will be the Company’s parent to ensure compliance with the Landlord and Tenant Act 1987. Although on the information provided to me I am satisfied the requirements of that statute appear to be met, that is not the issue before me and it is for the administrators to be satisfied that is so should the transaction proceed. Similarly, I am not concerned further with its specific terms on the basis that it will be for the administrators to decide whether to proceed if the application under *paragraph 71* is successful.
 - g) I am also not concerned with the contractual arrangements for the transfer of the parent company to Mr Hipkiss’s company known as “B4B” but with the fact this is intended to occur. He is the person willing to cause Daisy Property Investments Limited to buy the freehold for £3,347,000 on the conditions that: (i) £2,747,000 is used by the Company to purchase the freehold title from Sky Apartments (2018) Limited free of the charge(s) registered in favour of the Riley Creditors; and (ii) the title is unencumbered by the Notices and the non-registered purchasers’ equitable liens pursuant to an order under *paragraph 71*.
17. Those contracts link back to a settlement agreement dated 7 August 2020 between Mr Riley and various of his companies including Sky Apartments (2018) Limited of the one part and the Company, Mr and Mrs Tomlinson and various of their companies of the other part. Mr Tomlinson is a director of the Company. Under the terms of the agreement the Company, Mr and Mrs Tomlinson and various of their companies agreed to pay £2.647 million by instalments. If there was default in payment of any instalment for more than 14 days, immediate payment of the total outstanding could be demanded subject to a further 14 days before enforcement steps could be taken. This agreement (in summary) released a debt of £5,630.866 owed by Mr and Mrs Tomlinson and their companies and settled the extant disputes.

C2) Paragraph 71

18. **Paragraph 71** confers a discretionary power upon the Court to order that the sale by the Company in administration to Daisy Property Investments Limited can take place as though the property is not subject to the purchasers' liens. That discretion will exist when the Company owns the property. This is a back to back sale and there will be a moment of ownership by the Company when an order can take effect. However, the order can only be made if the court thinks the sale will be likely to promote the purpose of the administration and it is right to exercise its discretion.
19. In addition, **paragraph 71(3)** provides that the order is subject to the condition that the net proceeds of sale must be applied towards discharging the sums secured. Further, that there should be added to the net proceeds of sale any additional sum required to produce the net amount the court determines would be realised on a sale at a market value, as defined in **paragraph 111(1) of Schedule B1**.
20. That provision is important to the decision whether to grant an order under paragraph 71. First, its existence emphasises that the effect of the order is to infringe property rights belonging to others and the need to comply with the **First Protocol of Part II of Schedule 1 to the Human Rights Act 1998**. Second, it recognises that a sale by a company subject to an insolvency regime may not produce the amount which would be realised by a sale in the open market to a willing vendor. Third, it requires the secured creditor to receive that market value. Fourth, it means that the court must have valuation and other necessary financial evidence to assure it that the condition will be satisfied.

C3) Valuation Evidence

21. There is expert evidence. The valuation obtained by the Company from Landwood Commercial (Manchester) Limited of £600,000 is the product of: (i) the net return from the sale of long leases for the remaining 145 flats (calculated on the basis of a rental of £1460 per square metre) after deducting the gross development costs (including the developer's profit of 15% of gross development value) from the gross development value (£8,917,000 - £8370,000); plus (ii) the sale of the freehold title based upon ground rents (£320,000); less (iii) a discount for the risk that the local council may exercise its pre-emption right should practical completion not be achieved by 15 May 2021.
22. There has been considerable criticism on behalf of the opposing creditors of the reliance placed upon this this valuation evidence. In particular (in summary): the absence of a site visit; reliance upon information received from Mr Tomlinson who has a conflict of interest arising from the benefit he will receive from the Company's purchase; and the absence of market testing. I should make clear that even if justified, this should not be treated as a criticism of the valuer who has specified and explained its limitations and assumptions.
23. There is also expert evidence recently filed by "the Group Steering Committee" but provided by Avison Young in August 2020. It opines a market value of the freehold after the sale of all leases based upon a £250 per annum ground rent of £1,121,250. It values the long leases for 273 flats when completed at £12,322.70. It forecasts an annual market rent of £1,687,000 from the flats once sold and sub-let. It has not featured in the

submissions except to the extent that it is criticised by Ms Williamson on behalf of the Applicants. It does not address their expert evidence.

C4) Overview

24. It is apparent from the matters above that a decision must be reached in the face of opposition from (potentially) a majority of creditors directly affected and with an interest in the outcome. Whilst there are issues over their knowledge and understanding and as to short notice affecting the others, it is obviously important when the effect of an order under *paragraph 71* will be to achieve a sale which could not be achieved without a transfer of the freehold title to the Company and which will have the effect of depriving those with Notices of the rights they now have. It is appropriate to compare the position now with the position should the back to back sale proceed.

D) A Comparison

25. The position without this proposed transaction (using the Landwood Commercial (Manchester) Limited valuation) is as follows:
- a) The Company as the developer of the project now has no significant assets (only one of the flats returned to it upon surrender of a long lease) and is insolvent. As matters stand, creditors will receive little, if any, dividend from its insolvency whether secured or not.
 - b) The property is owned by Sky Apartments (2018) Limited. Notices are registered protecting the equitable charges of the purchasers' liens. Subject to contractual terms, their respective priority will depend upon the order they appear in the charges register, which will reflect the date of registration (*s.48 of the Land Registration Act 2002*). The charge registered in favour of the Riley Creditors will rank below the prior registered Notices.
 - c) As to those liens which have not been registered, the special rule of priority for registered land is that they will rank below all registered interests. The concept of notice or knowledge of a pre-existing interest has limited relevance to priorities affecting registered charges under *the Land Registration Act 2002* (see *ss 29 and 30*). There are exceptions, for example an overriding interest within *Schedule 3 to the Land Registration Act 2002*, but no-one has suggested that topic is relevant before me for the purposes of this application.
 - d) Sky Apartments (2018) Limited can sell its freehold title (its equity of redemption) subject to all or any registered charges remaining on the title. Obviously, their registration will affect the market value. As a result, based upon the valuation evidence, it is worthless.
 - e) The Riley Creditors could seek to enforce their charge by sale of the freehold title. However, absent consent or an order under *section 50 of the Law of Property Act 1925*, the transfer can only be effected subject to the prior

encumbrances securing liabilities totalling around £6.5 million. An alternative approach might be to sell the security not the property. However, that would be a sale of a security ranking below Notices securing some £6.5 million. In either case, based upon the valuation evidence, the Riley Creditors' security appears worthless.

- f) There is no reason in principle (absent issues of insolvency) why Sky Apartments (2018) Limited cannot refinance the Riley Creditors' lending and the charge may be assigned to the new lender if agreed. However, this too will not affect the prior security protected by the Notices. Based upon the valuation, this will require other security to be offered to the re-financier.
- g) Those with Notices can potentially enforce their liens through a sale of the freehold title, albeit with an order of the court. The amount they will receive as a sale price will be the market value of the undeveloped site. It is only if the net proceeds exceed approximately £6.5 million that the debt owed to the Riley Creditors will be repaid (whether in part or in full) pursuant to *section 105 of the Law of Property Act 1925*. Based on the valuation evidence, those with Notices will benefit from a sale in the region of £600,000. Subject to any contractual provisions, they will share that equally but without those who have not registered notices benefitting. I should add that no-one has sought to argue this point on the part of those without notices and this analysis therefore cannot take account of anything of which I have not been informed.

26. The transaction proposed by the contracts presents a different result:

- a) Sky Apartments (2018) Limited will sell the freehold title to the Company free from registration of the Riley Creditors' charge. The arrangements for this have not been disclosed but are between vendor and chargeholder. It is to be assumed, however, that this will benefit not only the Riley Creditors but also the director of the Company and his wife, Mr and Mrs Tomlinson, who under the settlement agreement have a joint and several liability with the Company for repayment of the loans secured under that agreement.
- b) This sale requires payment of a consideration of £2,747,000. It will be raised by the Company from the purchase price to be paid upon the back to back sub-sale to Daisy Property Investments Limited. Those with Notices will continue to be secured against the property when owned by the Company.
- c) The Company will transfer the freehold title to Daisy Property Investments Limited, who will become the freehold owner with unencumbered title. That will be achieved by a *paragraph 71* order (if made). £600,000, the balance of the £3,347,000 paid by Daisy Property Investments Limited after deduction of the £2,747,000, will be distributed amongst all creditors with a purchaser's lien.

E) Submissions

27. I have produced this judgment quickly to ensure there is a written decision available as soon as practicable in the context of the urgency explained to me. It is impractical to include a summary of counsels' submissions. I will address them within context insofar as it is necessary to do so.

F) Decision

F1) Perspective

28. The distinctions to be drawn from the comparison above arise because the transactions proposed are derived from the Company, Sky Apartments (2018) Limited and the Riley Creditors together with Mr Hipkiss. Wrongdoing has been alleged but that is not the point which flows, absent specific evidence. The point is that the interests of those with Notices have not been addressed during the negotiations or concluding of the contracts for the proposed transactions. For example, there has been not been the opportunity for them to negotiate the possibility that some of the money should be paid to them rather than for the benefit of the Riley Creditors. They obviously have potential leverage to raise that possibility.
29. Similarly it is that grouping which has been responsible, I do not suggest intentionally, for the urgency which underlies the application and causes Ms Williamson to submit it must be decided before the end of the week to avoid the contracts expiring. This position results from their actions and has led to the difficulties of notice for the application and to the general complaints that the Applicants' evidence cannot be tested and is in part opaque. The application needs to be viewed from this perspective in particular when the relief sought under *paragraph 71* will remove existing property rights.
30. Returning to *paragraph 71*, it is important for me to distinguish commercial from legal decisions. The former, for example whether this is a proper purchase price for the Company to pay and to receive in the context of its administration and its purposes, are for the administrators subject to challenge before the courts when the courts will decide whether the administrators are acting within their powers and duties. The court will not become the commercial decision maker. It is for the court to apply and decide the legal tests.
31. During the Friday hearing I nevertheless raised commercial issues for two reasons. First to ensure I understood the commercial approaches being taken. Second to try to encourage a commercial approach within the context of the objectors not even having met with the proposed administrators. However, I stressed during the hearing that whilst the commercial position provides an important context, it is for me to decide the legal issues based upon the submissions. That I will now do.

F2) Promotion of the Purpose

32. I am satisfied that the first requirement of *paragraph 71* is met. Disposal of the property to Daisy Property Investments Limited would be likely to promote the purpose of administration because it will result in a distribution to one or more secured creditors. That leads to the next issue of market value. This is relevant to the issue whether the condition of an order for sale provided by *paragraph 71(3)(b)* can be met and to the exercise of the court's discretion.

F3) Market Value

33. I do not criticise the report of the Applicants' expert based upon their instructions and available information. The author has explained its assumptions and limits and has opined on that basis. However, there must be concern over the significant assumptions made. I have not listed them but they are expressly set out in the report including at internal page numbers 140-141. Urgency has resulted in this form of report but it refers to the fact that a "red book" valuation could have been carried out within 2-3 weeks. That would have been more expensive but it would have produced a far more reliable valuation of the market value for the benefit of those with a purchaser's lien. In the context of this case and bearing in mind the perspective referred to above, the fact that those 2-3 weeks were not found and the absence of a "red book" valuation is of relevant concern when considering the market value issue.
34. In addition, the report raises questions relevant to the issue whether the market value opined should be higher. They include whether intending purchasers might: (i) anticipate a higher return per square metre for the purposes of selling the leases; (ii) expect reduced development costs; (iii) assess the local authority risk as low if works are started before May 2021 or reasonably shortly after; and (iv) be developers who would take into consideration a 15% profit based upon the gross development value (i.e. £1,337,550). The problem is that the evidence has not been tested either by expert evidence in answer or by cross-examination. That is due to lack of time but that does not lie at the door of those currently opposing the application. It leaves considerable uncertainty relevant to the court's exercise of its discretion.
35. An answer to those questions may be that this is an expert opinion based upon knowledge of the market which will appreciate that whilst purchasers will seek to make greater gains, £600,000 is still the market value. However, in this case there is a purchaser willing to pay a total of £3.45 million. This raises the question "why?" and whether that is evidence of market value. Indeed, whether it is the best evidence when it is what a willing purchaser will pay even without it being placed on the open market.
36. No-one has been able to explain that consideration to me in the light of the evidence or on instructions. Of course, it may be that Mr Hipkiss is willing to take risks in the belief that he can improve the return whether by reference to the four matters referred to within paragraph 33 above or otherwise. However, the point is that the court is being asked to reach a decision which will deprive people of existing property rights without being able to test the expert evidence in those circumstances. Support for the need to test the evidence can also be found in the fact that another expert has reached such a

different valuation even if that valuation itself might be undermined by the points raised by Ms Williamson.

37. Bearing all those matters in mind, I cannot be satisfied of market value on the untested evidence before me. I cannot be satisfied that the condition prescribed by *paragraph 71(3)(b)* will be met. As a result, it would not be right to exercise my discretion to make an order under *paragraph 71*. There are further factors justifying that refusal.

F4) Interests of Creditors

38. Against that conclusion and in any event Ms Williamson has submitted that the urgency of the matter means the court must approach this on the basis that it is in the interest of creditors because otherwise there is no realistic alternative proposal. Indeed, it is inevitable, she submits, that the value will fall bearing in mind (amongst other matters) the effects of winter, the a willing back to back sale purchaser may no longer exist and the risk of the local authority exercising its rights. This is “the bird in the bush” and the court should not deprive the lien holders, particularly those who have not joined the objectors, of the only certain chance of receiving a distribution (some 10p in the £) from this sorry state of affairs.
39. The problem with that approach is that whilst the power is discretionary and those matters are relevant considerations to the extent accepted, the emphasis of *paragraph 71* is upon recompense via the net proceeds of sale for those whose rights are removed. It requires valuation evidence that can be relied upon. I must consider the rights of those with security which will be discharged if an order is made. In my judgment it cannot be right to remove their security from the property when the evidence of value is inadequate notwithstanding those circumstances. In addition, as stated, I cannot be satisfied that the condition imposed by *paragraph 71(3)(b)* will be met. That being so, I cannot decide to make an order because of the absence of a realistic alternative proposal. Indeed, such an approach would also risk crossing the boundary into commercial decisions.
40. Even if her submission is correct, it would result from the fact that the transactions have been designed to bring those with Notices into the administration. Absent the transactions proposed, there would be no power to require them to accede to a sale which generates “only” £600,000. They would instead remain with their leverage of being the only parties who will benefit from a sale as those with the highest ranked charges. A position which enables them to decide whether to seek an order for sale.
41. Normally, the court will be very slow to make such an order when it is required in circumstances of the company during its administration having purchased an asset subject to security if it might place those with security in a worse position than they would otherwise have been in. *Paragraph 71* does not breach the *Human Rights Act 1998* because it is a provision in the general interest. Nevertheless, it subsists within the context that it interferes with a right to peaceful enjoyment of possessions conferred by *the First Protocol of Part II of Schedule 1*. Pulling secured creditors into an administration and requiring their security to be released is not normally consistent with the general interest. I do not consider it to be consistent in this case. I appreciate the point that the expert evidence relied upon by the Applicants establishes a market value

of £600,000 for a sale should they enforce their security. However, that market value is in issue.

42. In any event the submission does not take into consideration the possibility of those with Notices obtaining an order for sale and realising a return far more than 10p in the £ in reliance upon their prior rights resulting from registration. They have priority over those who did not register a purchaser's lien but the administrators are advised that the £600,000 produced from this transaction should be shared amongst all lien holders as a *pari passu* distribution in the administration.
43. Ms Williamson submits I should not draw a distinction between those with and without Notices because at the stage an order under **paragraph 71** will take effect the Notices will no longer matter. Privity of contract applies together with the statutory waterfall requiring creditors of the same group (those with a purchaser's lien) to share *pari passu*.
44. The submission that a distribution to secured creditors should not take account of the priorities existing pursuant to the **Land Registration Act 1925** will require further development if it is to be sustained. There is the problem in this case that there is no separate representation for the two groups of lien holders. However, even if the submission is sustainable, it will still be the case that those with Notices currently have considerable leverage for the purposes of negotiating receipt of a share of the money being used to pay the Riley Creditors. The transactions will not proceed without their agreement unless the court is to make a **paragraph 71** order to take effect when the Company purchases title. If an order is made it will result in white-washing over the fact that the Riley Creditors are being repaid £2,747,000 despite having security which ought to be valueless because their charge ranks behind the Notices. It will remove the leverage.
45. It is right to take into consideration the removal of the advantages of the current security provided by registration of the Notices. This includes the ability to try to negotiate payment of at least some part of the £2,747,000 Mr Hipkiss is prepared to pay Sky Apartments 2018 Limited through the Company. Those with Notices appear to be in a strong position to do so.
46. It is true, as Ms Williamson submits, that a **paragraph 71** order will only take effect after the Company becomes the freehold owner and, therefore, when the Riley Companies will no longer be secured creditors. However, it would be wrong to look at the application from that perspective when the purchase from Sky Apartments (2018) Limited by the Company will not occur unless an order under **paragraph 71** is made in advance. The court's discretion should not be exercised by ignoring the reality of the transaction. I do not consider it right for the court to remove that advantage by bringing them into the administration in order for the Company to benefit from an order under **paragraph 71**. All these matters lead to the conclusion that an order should not be made. An additional factor to address is the opposition to the application.

F5) Opposition

47. The majority of creditors appear to oppose the application. Even if there is cause for doubt over the knowledge of some, there is no creditor with a purchaser's lien who

supports it. I must have regard to the objections of those creditors with notice of the hearing who have decided to oppose it.

48. The first objection is based upon the fact that a 10p in the £ return is too little to justify acceptance of the transactions and loss of the current position. As I understand this will mean a return of just under £5,000. Their point is understandable.
49. The second objection is based upon an alternative proposal. I can understand the criticisms of that proposal. It is difficult to support in its current state. That is a factor to be weighed but it is still to be weighed in the context of the general objection summarised above. Further there are other options including potentially enforcing the liens protected by the Notices.
50. Whether any course other than the transactions proposed by the Applicants will achieve a return of £600,000 or more cannot be predicted. However, the weight of the objections is derived from the objectors' position as the only class of creditors with an interest in the administration as creditors and the fact that those with Notices appear to be in a strong position as a result of priority of registration.
51. I conclude that the objections should be given considerable weight when exercising my discretion. They too sustain my decision.
52. In reaching my decision I have not had to address the objections of Mr Bevan in his capacity as lessor. No lessor has raised objections. Ms Williamson has drawn attention to the benefits they will gain if the development is completed. However, no case to that effect or as to its relevance has been presented to me by a lessor. This may be attributable to an absence of notice but, if so, that presumably is attributable to the urgent nature of the application and cannot result in an order being made.

G) Conclusion

53. In all the circumstances set out above I will not make an order. I will hear submissions whether the administration will continue with proposals being prepared or whether it is right to rescind the administration order or address *paragraphs 79, 81, 84-85 and 98 of Schedule B1*.

Order Accordingly