Neutral citation number: [2023] EWHC 2805 (Ch)

Case No: CR-2022-MAN-000880

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

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

Date: Friday 13 October 2023

IN THE MATTER OF JDK CONSTRUCTION LIMITED
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Before:

HIS HONOUR JUDGE HODGE KC
Sitting as a Judge of the High Court

- -

Between:

MR ANDREW BLAND
&
MS JANET FRANCES MARY MAYO
(as joint liquidators of JDK Construction Limited)

Applicants

- and -

(1) JDK CONSTRUCTION LIMITED (in liquidation)
(2) MRS JEANETTE KEEGAN

Respondents

- -

- -

MR DOUGLAS COCHRAN (instructed by **Primas Law**) for the **Applicant**
MR STEVEN FENNELL (instructed by **Mills & Reeve**) for the **Second Respondent**

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APPROVED JUDGMENT

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HIS HONOUR JUDGE HODGE KC:

1. This is my extemporary judgment in the matter of JDK Construction Limited, case number CR-2022-MAN-000880.

2. This is the restored application by Mr Andrew Bland and Ms Janet Frances Mary Mayo, in their professed capacity as the joint liquidators of the company, for relief against both the company and Mrs Jeanette Keegan.

3. The application notice was issued as long ago as 6th October 2022. It sought directions to be given by the court, pursuant to section 232 of the Insolvency Act 1986 (as amended), in relation to the following matters arising in the liquidation of the company:

   (1) A declaration that the applicants' appointment as joint liquidators of the company is valid; or

   (2) A direction that the liquidation is permitted to proceed on the basis of the prima facie valid resolution to wind up until such time as Mrs Jeanette Keegan has obtained an order of the court declaring the applicants' appointment as joint liquidators to be invalid; or

   (3) A declaration that any procedural irregularity arising from Mrs Julie Keegan's actions without the consent of Mrs Jeanette Keegan does not invalidate the appointment of the applicants as joint liquidators of the company and/or the creditors' voluntary liquidation of the company; and

   (4) Such other directions as the court sees fit regarding the future conduct of the liquidation; and

   (5) That the costs of this application be paid as an expense of the liquidation of the company.

4. The background to the application is as follows: The company was incorporated on 1st February 2013, having adopted the model articles of association. At the outset, the sole director, and 100 per cent shareholder, of the company was Mrs Jeanette Keegan. Jeanette Keegan is the mother of Darren Keegan. In 2012, he had married Julie Keegan, although the couple are now presently involved in divorce proceedings. Jeanette appears to have treated the company as Darren's company. He effectively controlled the company at all times.

5. In October 2015, Mrs Julie Keegan was appointed a co-director of the company with Jeanette and she took a transfer from Jeanette of 50 per cent of the company's shares. On 20th April 2019 a stock transfer form was prepared, and ostensibly signed by Jeanette, by which her remaining 50 per cent shareholding was transferred to Julie, thereby making the latter the sole shareholder in the company. On or about the same time, Jeanette resigned as a director from the company, so Julie then became the sole shareholder and director.

6. Jeanette disputes that she ever signed the stock transfer form. In consequence, she also disputes that the company was ever capable of being placed into voluntary winding-up by the actions of Julie alone.

7. On 16th July 2021, Julie, as sole director and shareholder, purported to place the company into creditors' voluntary liquidation, and the applicants were appointed as joint liquidators. The statement of affairs sworn by Julie showed that the company was insolvent, owing some £114,000 to creditors, of whom the principal creditors were His Majesty's Revenue and Customs and National Westminster Bank.

8. On or about 13th September 2021, Mills & Reeve Solicitors, acting for Jeanette, and also for Darren, wrote to Julie alleging that the shares had been unlawfully transferred. In April 2022, Jeanette's solicitors wrote to the solicitors acting for the liquidators challenging Julie's resolution to place the company into creditors' voluntary liquidation. That led to the issue of the application notice, which first came before this court on 28th October 2022.

9. At that time, the evidence before the court consisted of a witness statement, dated 29th September 2022, from Ms Mayo, one of the joint liquidators, in support of the application, together with exhibit JM1. At paragraphs 12 and 13 of that witness statement, Ms Mayo explained that the joint liquidators had not been provided with the statutory books of the company by its director, Julie, or by its accountants, Davies McLennon. Following the liquidators' appointment, they had made requests, as joint liquidators, for the company books and records from the director and the former directors. They had referred the joint liquidators to an entity known as Xero, which did not include any copy of the members' register. As such, the joint liquidators have relied on the records at Companies House, which indicate that Jeanette's remaining 50 per cent shareholding had been transferred to Julie on 20th April 2019, and that Jeanette had resigned as a director, leaving Julie as the sole director, at about the same time.

10. In the absence of any evidenced copy of the register of members, it seems to me that the court should proceed on the footing that the company's accountants, who had filed the various notices of change at Companies House, had proceeded correctly in making corresponding entries in the register of members.

11. I therefore approach this application on the footing that the register of members, at the time of the resolution for voluntary winding-up, showed Julie as the sole shareholder and director of the company.

12. In addition to Ms Mayo's witness statement, there was also before the court, in October of last year, a very short witness statement from Mr Darren Keegan, dated 21st October 2022. That short witness statement simply confirmed that at no time had he signed any share document in relation to any share transfer from Jeanette to Julie in relation to the ownership of the company.

13. I note that Darren simply denies signing any share document. He does not address the question whether he had any involvement in relation to the share transfer, nor does he say whether or not he had any knowledge of that transaction.

14. The other witness statement before the court in October of last year was from Jeanette herself. It was dated 24th October 2022 and exhibited the share transfer form as JDLK1. Jeanette made it clear that she had not signed that document; and she produced a copy of that document in evidence, disputing that the signature on it is hers.

15. A curious feature of this case is that in paragraph 1 of her witness statement Jeanette describes herself as "a former director" of the company, thereby apparently accepting that she had ceased to be a director; but she provides no explanation as to how her appointment as a director of the company was terminated. Since her appointment as director came to an end at about the same time as the share transfer, I find it curious that she provides no explanation of how she came to cease to be a director whilst disputing that she signed the share transfer.

16. When the matter came before the court last October, Jeanette informed the court, through her counsel, that she intended to make an application seeking rectification of the register of members of the company to record that at all times since 20th April 2019 she had been the holder of 50 ordinary shares of £1 each of the company's capital. In light of that, the court ordered that the liquidators' application should be adjourned, to be re-listed for consideration by the trial judge hearing the rectification application when judgment should come to be delivered upon it. The order further provided for the liquidation of the company to be stayed until the rectification judgment date, or further order of the court; and it gave the parties permission to apply generally, and also reserved the costs.

17. What happened then was that a part 8 claim form was issued by Jeanette, naming both Julie and the company as defendants. The claim form was issued under case number CH-2022-MAN-001060 on 14th November 2022.

18. Paragraph 1 of the claim form sought a declaration that the stock transfer form, dated 20th April 2019, which purported to bear the claimant's signature, was a forgery and therefore void. Paragraph 2 sought a declaration, pursuant to section 125(1) of the Companies Act 2006, that the name of the claimant was removed from the company's register of members without sufficient cause. Paragraph 3 sought a further declaration, pursuant to section 125(3) of the Companies Act 2006, that the claimant (Jeanette) holds 50 of the 100 issued shares of £1 each in the capital of the second defendant. Paragraph 4 sought an order directing the rectification of the company's register of members accordingly. There was also a claim for consequential directions for the filing of replacement confirmation statements at Companies House.

19. There were particulars of claim, and a defence from Julie, which she verified by a statement of truth.

20. At paragraph 12(d) of that defence, Julie admitted that she had signed the share transfer form; but she denied that she had done so with the intention of forging, or purporting to forge, Jeanette's signature, or that of any other person. Julie, who had signed the share transfer form as "J Keegan", said that she had intended to sign, and did as a matter of fact sign, the share transfer form in her own capacity, as herself. She pleaded that the circumstances in which she had done so were that Darren had placed the share transfer form in front of her and had aggressively demanded that she sign it, raising his voice in the process. Darren had informed Julie, when placing the

share transfer form before her, that it was an internal company document that she was required to sign in order to resolve a dispute that had arisen between herself and the claimant (Jeanette) in respect of tax on dividends. Julie signed the share transfer form on the basis that:

(1) she was aggressively told to do so by Darren;

(2) she did not properly consider its contents and had believed Darren when he had told her that it was an internal document that she was required to sign in order to end a disagreement between Darren and the claimant (Jeanette); and

(3) she did not intend to forge, and did not forge, the signature of the claimant.

21. That explanation, of course, begs the question of how Julie could then, later on, have come to sign the necessary special resolution, placing the company into voluntary liquidation, which, given that she had given no notice of any extraordinary general meeting to pass that resolution to Jeanette, must have been on the basis that she was the sole shareholder of the company.

22. Jeanette's pleaded case in the rectification claim (at paragraph 16.1 of the particulars of claim) was that Julie and Darren were the only people who had had the opportunity to forge Jeanette's signature on the share transfer form, it being wholly unlikely that the company's accountant would have done so. Since Darren did not forge Jeanette's signature, Julie is the only person capable of having done so.

23. The company's accountant, Mr Graham Davies, of Davies McLenon, has been approached for information in connection with the filing at Companies House of the notice of the share transfer from Jeanette to Julie in April 2019. Although not formally in evidence, Mr Davies has stated in emails that the black handwriting on the upper part of the stock transfer form is his. He says that he must have prepared the form and then either handed it to Darren or posted it to Darren and Julie. He says that he would not have posted the form directly to Jeanette, and he did not witness anyone signing the form. He says in a later email that he cannot specifically recall being asked to prepare the form; however, he dealt mainly with Darren, and it would have been Darren who had asked Mr Davies to prepare the form. The accountants had retained the original signed form in their office, but it has now been provided to Darren.

24. There was no judicial determination of the issues raised by the rectification claim. Instead, it was settled by way of a Tomlin order, dated 2nd June 2023, and sealed on 19th June 2023. The Tomlin order provided, in standard form, for a stay of the proceedings, except for the purposes of carrying the agreed terms into effect.

25. The schedule to the Tomlin order included an acknowledgment by Julie that she did not own the 50 shares in the company purportedly transferred to her on 20th April 2019 by Jeanette. Julie agreed to transfer the 50 shares that she did not own to Jeanette for a nominal consideration of £1 within two working days of receipt of the sealed copy of the order. There was an agreement as to the ownership of certain assets in the possession of the company. Julie agreed to cause to appoint Darren as director of the company and, immediately after his appointment, to resign as a director of the company herself.

26. Darren agreed to indemnify Julie against all and any claims made against her by the company in relation to any matter arising on or before the date of the agreement. A specific provision was made for such indemnity to include any claims that the company brought by a liquidator or the liquidators, but to exclude any claims made by either or both of the liquidators in relation to their appointment, or purported appointment, as liquidators of the company and/or their remuneration and expenses in so acting and/or the costs of these proceedings. Darren was to pay a contribution of £8,000 plus VAT to Julie in respect of the costs of rectification claim on an *ex gratia* basis, and without any admission of liability. There was also a confidentiality provision.

27. In the light of that Tomlin order, and there having been no judicial determination of the issues concerning the validity of the share transfer form from Jeanette to Julie, the solicitors for the joint liquidators approached the court for it to restore the application for further hearing. That was done by way of a hearing notice dated 2nd October 2023.

28. In relation to that restored hearing, Ms Mayo has made a second witness statement, dated 6th October 2023, bringing matters up to date, and exhibiting the correspondence by email with the company's accountants as exhibit JM2.

29. The application came on before me this morning. I had had the opportunity of pre-reading the hearing bundle, which extends to 187 pages, in light of the helpful written skeleton arguments of Mr Douglas Cochran (of counsel), for the applicant liquidators, and Mr Steven Fennell (also of counsel), for the second respondent (Jeanette). The first respondent is the company (in liquidation).

30. Mr Fennell has invited the court finally to determine all outstanding matters today. He submits that nothing is to be gained by any further investigation of the evidence. There has been no application for cross-examination of either Darren or Jeanette. There is no evidence before the court from Julie, beyond the defence to the rectification claim, which she has verified by a statement of truth.

31. Mr Fennell submits that nothing is to be gained by any further investigation of the evidence. There has been no suggestion that Jeanette in any way authorised the forging of her signature on the April 2019 stock transfer form, or that she has in some way acquiesced in that transfer, or is estopped from denying that it is a forgery. I accept that submission. I can see that no valid purpose is to be served by any attempt at any further investigation of the facts of this case.

32. Mr Cochran began by emphasising that the applicants (and joint liquidators) have been placed in an invidious position. As innocent liquidators, they find themselves caught in the middle of what has been an unsavoury shareholders' dispute between Julie, on the one hand, and Jeanette and Darren, on the other. He emphasises that this company has at all times been a creature of Darren, and that it is he who stands to gain from removing the liquidators from office, because it is he who is in *de facto* control of the company. Mr Cochran submits that the limited evidence before the court suggests that it is Darren who was the person who effectively orchestrated the production and use of the share transfer form, although he has now decided that it is in his own best interests to deny its validity and effect. Mr Cochran emphasises, rightly, that there is no court finding that there has been any forgery.

33. Mr Cochran relies upon what he says is the conclusive effect of the register of members of the company. He points to section 112(2) of the Companies Act 2006, which provides that every person, other than the original subscribers to the company's memorandum, who agrees to become a member of a company, and whose name is entered in its register of members, is a member of the company. He points to the requirement in section 113 of the Act for every company to keep a register of its members; and he points to what must be entered in that register, and to the criminal consequences that follow from a company making default in complying with section 113.

34. Mr Cochran acknowledges the reliance placed by Mr Fennell on section 127 of the 2006 Act, which provides that the register of members is *prima facie* evidence of any matters which are, by the Act, directed or authorised to be inserted in it. Mr Cochran submits that that does not extend to the conclusive statement in the company's register of those who are at any time members of the company. Mr Cochran submits that section 127 is directed essentially to the other matters that must be included in the register of members.

35. Mr Cochran emphasises that Jeanette's remedy was to seek rectification of the company's register, as she in fact did in the Part 7 proceedings which she instituted. Mr Cochran points to the fact that, according to the register of members, Julie was the sole shareholder of the company at the time she purported to place it into creditors' voluntary liquidation. Mr Cochran points to the fact that Jeanette's witness statement does not deal with any matters of true consequence. She does not say that she ever had any role in the management of the company. She does not dispute that the company is insolvent. She does not assert that she has any way been prejudiced by the company's entry into voluntary liquidation.

36. Mr Cochran's first submission is that even if the stock transfer form were a forgery, this does not affect the special resolution placing the company in voluntary liquidation. According to the company's register, Julie was the only shareholder at the time of that resolution and, therefore, the only person who needed to be given notice of, and to vote upon, the resolution. Jeanette was not legally a member of the company at the relevant time, because the register of members is determinative as to who the members were. Mr Cochran points to the fact that the claim for rectification of the register in the Part 7 proceedings is predicated on the footing that her name did not appear on the register, and that the register needed to be rectified to restore her name to it. Having been wrongly removed from the register of members, Jeanette's remedy was to seek rectification; but the fact that she was not on the register at the time the company went into creditors' voluntary winding-up does not operate retrospectively to invalidate the liquidator's appointment. Mr Cochran's alternative submission is that if, in some way, the appointment was defective, he is entitled to rely upon section 232 of the Insolvency Act 1986, which provides that the acts of an individual as the liquidator, or other insolvency office holder, of a company are valid, notwithstanding any defect in his appointment, nomination or qualifications.

37. I was referred to the commentary at paragraph 9-035 and 9-036 of the fifth edition of *McPherson & Keay: The Law of Company Liquidations*. Paragraph 9-035 reads as follows:

> "The question of the validity of the acts of a liquidator whose appointment or qualifications are subsequently discovered to have been defective seems to have arisen principally in relation to liquidators appointed in voluntary winding up, although problems of this kind can certainly also arise in compulsory winding up. As regards the former, the courts have in the past frequently insisted upon strict compliance with the formal requirements with respect to the calling of meetings and passing of resolutions for voluntary liquidation, and there have, as a result, been a number of cases where the validity of a liquidator's actions has been called in question on account of a failure to observe the necessary formalities.
>
> Section 232 of the Act provides that the acts of a liquidator are valid notwithstanding any defect in the appointment, nomination or qualifications of the liquidator. It has been said that this simply creates a rebuttable presumption in favour of the validity of acts done by the liquidator. This view does not derive support from the terms of s.232, which, it has been said
>
> > 'may very well validate acts done by, say, liquidators who were not or, indeed, never could have been legally appointed, if there is nothing on the face of the proceedings to indicate that they have in any way been improperly appointed. The object is to validate their acts until those acts are called into question, or until, rather, the validity of their appointment is called into question; but even then the acts done by them up to that date are valid, although they could never have been legally done.'"

Paragraph 9-036 reads:

> "At the same time there are obvious limits to the scope of the section: in the first place, it seems settled that it can only apply where there has been at least a purported appointment, in the form of a genuine attempt to appoint a liquidator; secondly, the liquidator's acts are validated only in so far as the defects in qualification or appointment are discovered 'afterwards', i.e. after the acts in question have been done; it follows that, once any such defects have been discovered, the liquidator cannot validly perform further acts in purported reliance upon this validating provision."

38. I was taken by both counsel to the decision of the Court of Appeal in Chancery in the case of *Re Bridport Old Brewery Company* (1867) LR 2 Ch App 191. I was invited to read in full the short judgments of Lord Justices Turner and Cairns.

39. I was also taken to the recent judgment of Ms Sarah Worthington KC, sitting as a deputy High Court Judge, in the case of *Qureshi v Association of Conservative Clubs Ltd* [2019] EWHC 1165 (Ch). I was taken to paragraphs 52 to 59 of that judgment. At paragraph 57, the deputy judge recognised that:

> "the courts will not validate a decision where no effort at all has been made to adhere to the protective procedures. … To proceed otherwise might suggest the imposed protection lacks any purpose."

It was accepted

> "… that the court will not intervene in procedural irregularities if any such intervention would simply result in precisely the same outcome, but with the added inconvenience of unravelling what had been done and starting all over again merely to arrive at the same end point … the court operates on a principle that might in colloquial terms be described as 'no harm, no foul'."

In that case, the judge said that it was

> "… notable that this winding up has attracted no complaint from any of the Club's creditors or its members. There has been no complaint from these parties about either the substantive decisions that have been taken or about the procedures adopted to reach those decisions. Plainly there have been irregularities, but it would appear that none of them have exercised those whom the procedures are designed to protect."

In the present case, by contrast, whilst there has been no objection from any creditor, Jeanette, as 50 per cent shareholder in the company, has strongly objected to the placing of the company into creditors' voluntary liquidation.

40. In response to that, Mr Cochran makes the point that it is not Jeanette who takes any decisions in relation to the company. It is Darren who does so. Mr Cochran emphasises that the liquidators had, at all times, behaved in good faith.

41. In summary, Mr Cochran submits the court should say that the validity of the appointment has been demonstrated and should be confirmed; and, if not, the court should take steps, under section 232, to validate the actions of the liquidators to date.

42. Mr Fennell, for Jeanette, submits that this is a straightforward case. She did not sign, or even know about, the stock transfer form. The document has no significance as against her. Mr Fennell submits that if there was no valid resolution to wind up the company, then clearly it has not gone into voluntary liquidation. For there to be a

voluntary liquidation there had to be a special resolution: see section 84(1)(b) of the Insolvency Act 1986. Under section 281(1)(b) of the Companies Act 2006, such a resolution was required to be passed at a meeting of the members; and section 307(1) required at least 14 days' notice of that general meeting to be given.

43. None of those essential requirements were complied with before Julie purported to pass a special resolution placing the company into voluntary winding-up. Moreover, under section 100(1) of the Insolvency Act 1986, the company might nominate a person to be liquidator at the company meeting at which the resolution for voluntary winding-up was passed. If there was no valid resolution to wind up, then there was no valid appointment of the applicants as joint liquidators. Mr Fennell accepted that section 232 might come into play to rectify, at least for the past, the defect in the appointment of the joint liquidators; but he submitted that it could not cure the failure to pass a valid special resolution for the winding-up of the company. Section 232 does not extend to any defect in the commencement of the winding-up; nor did it have any causative effect where the underlying liquidation was concerned. There is no need for Jeanette to identify any prejudice, or to seek to assert the company's solvency. The liquidation simply had not happened.

44. Mr Fennell invited me to re-read the judgments in the Court of Appeal in Chancery in the *Bridport Old Brewing Company* case and, in particular, he emphasised what Turner LJ at the foot of page 194 of the report:

> "It is of great importance that the steps taken in a matter of such consequence as the resolving to wind up a company should be perfectly regular and in the present case I think that there was no sufficient notice; that the resolution to wind up was therefore irregular, and that the usual order for compulsory winding-up ought now to be made."

Mr Fennell also pointed out that if section 232 had any application at all, it would not extend to acts of the joint liquidators after the invalidity of the liquidators' appointment had been raised. In the present case, issue had been taken with the liquidators' appointment from about April 2022, when Jeanette's solicitors had first written to the liquidators' solicitors challenging Julie's board resolution.

45. Those were the submissions.

46. I accept Mr Fennell's submission that if the purported transfer of the 50 shares from Jeanette to Julie was ineffective, and for as long Jeanette remained the holder of those shares, then, because she was not given notice of the extraordinary meeting at which the special resolution to wind up the company was proposed to be passed, pursuant to section 84(1)(b) of the Insolvency Act 1986, then that resolution was invalid.

47. I also accept Mr Fennell's submission that section 232 does not cover the situation where no valid resolution has been passed to put a company into creditors' voluntary liquidation, and the appointment is therefore a nullity. Even if it did apply, it would not operate to validate acts done after the defect in the liquidators' appointment had been identified.

48. As it seems to me, the real issue in the present case is therefore whether, even on the footing that the share transfer form was a forgery, Jeanette should have been treated

as a member of the company for the purposes of the requirement to participate in the special resolution to place the company into voluntary winding-up. It therefore seems to me that the real issue in the present case becomes one as to Jeanette's continuing status as a member when, on the evidence based on the filings at Companies House, her name did not, at that time, appear on the company's register of members.

49. Notwithstanding the provisions of section 127 of the Companies Act 2006, it does seem to me that the register is conclusive as to those who were members of the company at the time of the special resolution. Section 112(2) is, in my judgment, clear that every person whose name is entered in the company's register of members is a member of the company. That is reinforced by the power under section 125 that is conferred upon the court to rectify the register.

50. When one looks at the scheme of the Companies Act 2006 as a whole, it seems to me that the register is conclusive as to those who are members of the company at any particular point in time. On that basis, even if the register of members were liable to be rectified, following a decision that the share transfer form was a forgery and of no effect, since Jeanette's name was not on the register at the time of the passing of the special resolution to wind-up the company, it seems to me that the company was validly placed into voluntary winding-up.

51. On that basis, I find that it is appropriate to accede to the applicants' claim for a declaration that their appointment as joint liquidators was valid. It is therefore unnecessary for me to consider the other alternative heads of relief that the liquidators seek by their application.

52. So that concludes this extemporary judgment.

(See separate transcript for continuation of Proceedings)

(This Judgment has been approved by HHJ Hodge KC.)

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