

Statutory provisions and authorities referred to by Catherine Addy QC in the talk, *Weighing up all the tactical scenarios, when will insolvency law powers turn the scales in your clients' favour when obtaining disclosure and investigating fraud?*

135.— Appointment and powers of provisional liquidator.

- (1) Subject to the provisions of this section, the court may, at any time after the presentation of a winding-up petition, appoint a liquidator provisionally.
- (2) In England and Wales, the appointment of a provisional liquidator may be made at any time before the making of a winding-up order; and either the official receiver or any other fit person may be appointed.
- (3) In Scotland, such an appointment may be made at any time before the first appointment of liquidators.
- (4) The provisional liquidator shall carry out such functions as the court may confer on him.
- (5) When a liquidator is provisionally appointed by the court, his powers may be limited by the order appointing him.

Revenue and Customs Commissioners v Winnington [2014] EWHC 1259 (Ch) @ [3]-[10]

286.— Power to appoint interim receiver.

- (1) The court may, if it is shown to be necessary for the protection of the debtor's property, at any time after the presentation of a bankruptcy petition and before making a bankruptcy order, appoint the official receiver or an insolvency practitioner to be interim receiver of the debtor's property.
[...]
- (3) The court may by an order appointing any person to be an interim receiver direct that his powers shall be limited or restricted in any respect; but, save as so directed, an interim receiver has, in relation to the debtor's property, all the rights, powers, duties and immunities given by the next section.
- (4) An order of the court appointing any person to be an interim receiver shall require that person to take immediate possession of the debtor's property or, as the case may be, the part of it to which his powers as interim receiver are limited.
- (5) Where an interim receiver has been appointed, the debtor shall give him such inventory of his property and such other information, and shall attend on the interim receiver at such times, as the latter may for the purpose of carrying out his functions under this section reasonably require.
- (6) Where an interim receiver is appointed, section 285(3) applies for the period between the appointment and the making of a bankruptcy order on the petition, or the dismissal of the petition, as if the appointment were the making of such an order.
- (7) A person ceases to be interim receiver of a debtor's property if the bankruptcy petition relating to the debtor is dismissed, if a bankruptcy order is made on the petition or if the court by order otherwise terminates the appointment.

(8) References in this section to the debtor's property are to all his property, whether or not it would be comprised in his estate if he were made bankrupt.

287.— Powers of interim receiver.

(1) An interim receiver appointed under section 286 is the receiver and (subject to section 370 (special manager)) the manager of the debtor's property and is under a duty to act as such.

(2) The function of an interim receiver while acting as receiver or manager of the debtor's property under this section is to protect the property; and for this purpose—

(a) he has the same powers as if he were a receiver or manager appointed by the High Court, and

(b) he is entitled to sell or otherwise dispose of any perishable goods comprised in the property and any other goods so comprised the value of which is likely to diminish if they are not disposed of.

(3) An interim receiver while acting as receiver or manager of the debtor's property under this section—

(a) shall take all such steps as he thinks fit for protecting the debtor's property,

(b) is not required to do anything that involves his incurring expenditure, except in pursuance of directions given by—

(i) the Secretary of State, where the official receiver is the interim receiver, or

(ii) the court, in any other case,

(c) may, if he thinks fit (and shall, if so directed by the court) at any time seek a decision on a matter from the debtor's creditors.

(4) Where—

(a) an interim receiver acting as receiver or manager of the debtor's property under this section seizes or disposes of any property which is not the debtor's property, and

(b) at the time of the seizure or disposal the interim receiver believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

the interim receiver is not to be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by his negligence; and he has a lien on the property, or the proceeds of its sale, for such of the expenses of the interim receivership as were incurred in connection with the seizure or disposal.

Barker v Baxendale-Walker [2018] EWHC 2518 (Ch).

234.— Getting in the company's property.

(1) This section applies in the case of a company where—

(a) the company enters administration,

(b) an administrative receiver is appointed, or

(c) the company goes into liquidation, or

(d) a provisional liquidator is appointed;

and “*the office-holder*” means the administrator, the administrative receiver, the liquidator or the provisional liquidator, as the case may be.

(2) Where any person has in his possession or control any property, books, papers or records to which the company appears to be entitled, the court may require that person forthwith (or within such period as the court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the office-holder.

(3) Where the office-holder—

(a) seizes or disposes of any property which is not property of the company, and

(b) at the time of seizure or disposal believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

the next subsection has effect.

(4) In that case the office-holder—

(a) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the office-holder's own negligence, and

(b) has a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

Chesterton v Emson [2017] EWHC 3226 (Ch)

235.— Duty to co-operate with office-holder.

(1) This section applies as does section 234; and it also applies, in the case of a company in respect of which a winding-up order has been made by the court in England and Wales, as if references to the office-holder included the official receiver, whether or not he is the liquidator.

(2) Each of the persons mentioned in the next subsection shall—

(a) give to the office-holder such information concerning the company and its promotion, formation, business, dealings, affairs or property as the office-holder may at any time after the effective date reasonably require, and

(b) attend on the office-holder at such times as the latter may reasonably require.

(3) The persons referred to above are—

(a) those who are or have at any time been officers of the company,

(b) those who have taken part in the formation of the company at any time within one year before the effective date,

(c) those who are in the employment of the company, or have been in its employment (including employment under a contract for services) within that year, and are in the office-holder's opinion capable of giving information which he requires,

(d) those who are, or have within that year been, officers of, or in the employment (including employment under a contract for services) of, another company which is, or within that year was, an officer of the company in question, and

(e) in the case of a company being wound up by the court, any person who has acted as administrator, administrative receiver or liquidator of the company.

(4) For the purposes of subsections (2) and (3), “*the effective date*” is whichever is applicable of the following dates—

- (a) the date on which the company entered administration,
 - (b) the date on which the administrative receiver was appointed or, if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed,
 - (c) the date on which the provisional liquidator was appointed, and
 - (d) the date on which the company went into liquidation.
- (5) If a person without reasonable excuse fails to comply with any obligation imposed by this section, he is liable to a fine and, for continued contravention, to a daily default fine.

236.— Inquiry into company's dealings, etc.

- (1) This section applies as does section 234; and it also applies in the case of a company in respect of which a winding-up order has been made by the court in England and Wales as if references to the office-holder included the official receiver, whether or not he is the liquidator.
- (2) The court may, on the application of the office-holder, summon to appear before it—
- (a) any officer of the company,
 - (b) any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or
 - (c) any person whom the court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company.
- (3) The court may require any such person as is mentioned in subsection (2)(a) to (c) to submit to the court an account of his dealings with the company or to produce any books, papers or other records in his possession or under his control relating to the company or the matters mentioned in paragraph (c) of the subsection.
- (3A) An account submitted to the court under subsection (3) must be contained in—
- (a) a witness statement verified by a statement of truth (in England and Wales), and
 - (b) an affidavit (in Scotland).
- (4) The following applies in a case where—
- (a) a person without reasonable excuse fails to appear before the court when he is summoned to do so under this section, or
 - (b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the court under this section.
- (5) The court may, for the purpose of bringing that person and anything in his possession before the court, cause a warrant to be issued to a constable or prescribed officer of the court—
- (a) for the arrest of that person, and
 - (b) for the seizure of any books, papers, records, money or goods in that person's possession.
- (6) The court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the court under the warrant or until such other time as the court may order.

British & Commonwealth Holdings plc (Joint Administrators) v Spicer & Oppenheim; Re British & Commonwealth Holdings plc (No 2) [1993] AC 426

Re Akkurate Ltd (in liquidation) [2020] EWHC 1433 (Ch)
(considering *Re MF Global UK Ltd* [2015] EWHC 2319 (Ch), *Re Omni Trustees (No 2)* [2015] EWHC 2697 (Ch) and *Re Carna Meats (UK) Ltd, Wallace v Wallace* [2019] EWHC 2503 - and determining bound by *Re Tucker (a bankrupt)* [1990] Ch 148)

366.— Inquiry into bankrupt's dealings and property.

(1) At any time after a bankruptcy order has been made the court may, on the application of the official receiver or the trustee of the bankrupt's estate, summon to appear before it—

- (a) the bankrupt or the bankrupt's spouse or former spouse or civil partner or former civil partner,
- (b) any person known or believed to have any property comprised in the bankrupt's estate in his possession or to be indebted to the bankrupt,
- (c) any person appearing to the court to be able to give information concerning the bankrupt or the bankrupt's dealings, affairs or property.

The court may require any such person as is mentioned in paragraph (b) or (c) to submit a witness statement verified by a statement of truth to the court containing an account of his dealings with the bankrupt or to produce any documents in his possession or under his control relating to the bankrupt or the bankrupt's dealings, affairs or property.

(2) Without prejudice to section 364, the following applies in a case where—

- (a) a person without reasonable excuse fails to appear before the court when he is summoned to do so under this section, or
- (b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the court under this section.

(3) The court may, for the purpose of bringing that person and anything in his possession before the court, cause a warrant to be issued to a constable or prescribed officer of the court—

- (a) for the arrest of that person, and
- (b) for the seizure of any books, papers, records, money or goods in that person's possession.

(4) The court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the court under the warrant or until such other time as the court may order.

367.— Court's enforcement powers under s. 366.

(1) If it appears to the court, on consideration of any evidence obtained under section 366 or this section, that any person has in his possession any property comprised in the bankrupt's estate, the court may, on the application of the official receiver or the trustee of the bankrupt's estate, order that person to deliver the whole or any part of the property to the official receiver or the trustee at such time, in such manner and on such terms as the court thinks fit.

(2) If it appears to the court, on consideration of any evidence obtained under section 366 or this section, that any person is indebted to the bankrupt, the court may, on the application of the official receiver or the trustee of the bankrupt's estate, order that person to pay to the official receiver or trustee, at such time and in such manner as the court may direct, the whole or part of the amount due, whether in full discharge of the debt or otherwise as the court thinks fit.

(3) The court may, if it thinks fit, order that any person who if within the jurisdiction of the court would be liable to be summoned to appear before it under section 366 shall be examined in any part of the United Kingdom where he may be for the time being, or in any place outside the United Kingdom.

(4) Any person who appears or is brought before the court under section 366 or this section may be examined on oath, either orally or by interrogatories, concerning the bankrupt or the bankrupt's dealings, affairs and property.

368. Provision corresponding to s. 366, where interim receiver appointed.

Sections 366 and 367 apply where an interim receiver has been appointed under section 286 as they apply where a bankruptcy order has been made, as if—

(a) references to the official receiver or the trustee were to the interim receiver, and

(b) references to the bankrupt and to his estate were (respectively) to the debtor and his property.

Hooper v Duncan Lewis (Solicitors) Ltd and ors [2010] BPIR 591

Baxendale Walker v Irwin Mitchell LLP and others [2018] EWHC 3572 (Ch)

133.— Public examination of officers.

(1) Where a company is being wound up by the court, the official receiver or, in Scotland, the liquidator may at any time before the dissolution of the company apply to the court for the public examination of any person who—

(a) is or has been an officer of the company; or

(b) has acted as liquidator or administrator of the company or as receiver or manager or, in Scotland, receiver of its property; or

(c) not being a person falling within paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company.

(2) Unless the court otherwise orders, the official receiver or, in Scotland, the liquidator shall make an application under subsection (1) if he is requested in accordance with the rules to do so by—

(a) one-half, in value, of the company's creditors; or

(b) three-quarters, in value, of the company's contributories.

(3) On an application under subsection (1), the court shall direct that a public examination of the person to whom the application relates shall be held on a day appointed by the court; and that person shall attend on that day and be publicly examined as to the promotion,

formation or management of the company or as to the conduct of its business and affairs, or his conduct or dealings in relation to the company.

(4) The following may take part in the public examination of a person under this section and may question that person concerning the matters mentioned in subsection (3), namely—

- (a) the official receiver;
- (b) the liquidator of the company;
- (c) any person who has been appointed as special manager of the company's property or business;
- (d) any creditor of the company who has tendered a proof or, in Scotland, submitted a claim in the winding up;
- (e) any contributory of the company.

Re Casterbridge Properties Ltd [2003] EWCA Civ 1246

Re Seagull Manufacturing Co Ltd (in liquidation) [1993] Ch 345

Masri v Consolidated Contractors International (UK) Ltd (No 4) [2009] UKHL 43

112.— Reference of questions to court.

(1) 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.

(2) The court, if satisfied that the determination of the question or the required exercise of 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 just.

(3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall enter it in his records relating to the company.

155.— Inspection of books by creditors, etc.

(1) The court may, at any time after making a winding-up order, make such order for inspection of the company's books and papers by creditors and contributories as the court thinks just; and any books and papers in the company's possession may be inspected by creditors and contributories accordingly, but not further or otherwise.

Sunwing Vacation inc v E-Clear (UK) Plc [2011] EWHC 1544 (Ch)

Memom v Cork [2018] EWHC 594

Lombard North Central Plc v Peter Brian Bradley [2002] EWHC 121 (QB)

Sutton v GE Captial Commercial Finance Limited [2004] EWCA Civ 315

Willmont & others v Shlosberg [2017] EWHC 2446 (Ch)

In re a Company (No 005374 of 1993) [1993] BCC 734

Shlosberg v Avonwick Holdings Ltd [2016] EWCA Civ 1138

Leeds and another v Lemos and others [2017] EWHC 1825 (Ch)