

ENGLAND AND WALES / JUDGMENT

Brown & Anor v Button & Ors

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Neutral Citation Number: [2011] EWHC 1034 (Ch) IN THE HIGH COURT OF JUSTICE CHANCERY DIVISION LEEDS DISTRICT REGISTRY Case No: 1872 of 2010 IN THE MATTER OF BROADSIDE COLOURS AND CHEMICALS LIMITED AND IN THE MATTER OF THE INSOLVENCY ACT 1986 The Court House Oxford Row Leeds LS1 3BG Date: 4th May 2011 Before : His Honour Judge Behrens sitting as a Judge of the High Court in Leeds

- ----- Between :

(1) CHRISTOPHER JOHN BROWN

(2) ANDREW JOHNSON MAYBERRY (Joint Liquidators of the above named Company)

- and -

(1) GEOFFREY BUTTON

(2) JAMES DAVID BUTTON

(3) CATHERINE VALERIE BUTTON Applicants Respondents

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- ----- Ms Clare Jackson (instructed by hlwcommerciallawyers LLP) for the Applicants Geoffrey Button appeared on own behalf and that of his wife, the Third Respondent. His son, the Second Respondent, did not appear and was not represented
Hearing dates: 28th, 29th March 2011

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Judgment

Judge Behrens : 1 Introduction This is an application by the Liquidators of Broadside Colours and Chemicals Limited (“BCCL”) under s 212 of the Insolvency Act 1986 against the Respondents, its three Directors in respect of sums due under the Directors Loan Accounts of the First (“Geoffrey Button”) and Second (“James Button”) Respondents The sums claimed are £58,711.75 and £68,636.95 but it is contended that all three directors are jointly liable in respect of all sums due. Reliance is placed by the Liquidators on ss 330 and 341 of the Companies Act 1985. Geoffrey Button is the only one of the Respondents to have filed a Defence. In it he takes a number of points. He claims that the sums otherwise due under the loan accounts were offset by a Final Dividend of £54,000 declared and paid in respect of the July 2003 accounts and an interim

dividend of £41,553.42 in respect of the period from August 2003 to March 2004. He challenges other payments attributed to the loan accounts after March 2004 on the basis that they should have been treated as salary. As the application was not issued until more than 6 years after the allegedly unlawful loans an issue (raised by me) also arises as to whether any of the claims are statute barred. In answer to these defences the Liquidators assert that, for various reasons none of the dividends are valid. James Button was not a shareholder and thus not entitled to a dividend. In any event the dividends were not paid pro rata the shareholdings. There was no compliance with the requirements of the Companies Act 1985 and/or BCCL's Articles. There is no evidence that the post April 2004 payments were salary rather than loans. They assert that the claims are not statute barred. 2 Witnesses Three witnesses gave evidence before me – Mr Christopher Brown, one of the Liquidators on behalf of the Liquidators, Geoffrey Button and Mr Ian North on behalf of the Respondents. Mr North is a qualified professional accountant. At the relevant time he was a senior manager with Geoffrey Britton & Co, a Barnsley firm of accountants. As such he was responsible for the production of the annual accounts of BCCL. He also appears to have been responsible for ensuring that BCCL complied with relevant company formalities. 3 The facts 3.1 BCCL BCCL was incorporated on 24th October 1979 and began trading immediately. Its main business was the supply of dyes to the textile trade. Initially it traded from rented premises in Bradford but after about 5 years it moved to a property in Rook Lane Mills which is owned by a property company controlled by the directors. According to Geoffrey Button much of the trade consisted of reselling dyes that the Company had bought. He did however have the capability of mixing or diluting the dyes and selling the resulting mixture. Between 1985 and the early 1990's BCCL was successful with its turnover growing to over £2 million per year. In the mid 1990's there was a decline in the carpet trade, and BCCL experienced a number of bad debts. It will be necessary to look at the financial position in more detail later in the judgment. For present purposes it is sufficient to state that the financial position deteriorated so that on 10th September 2004 it entered into Creditors Voluntary Liquidation ("CVL"). The Statement of Affairs shows a deficiency of £265,870.80. 3.2 Officers There is fortunately no dispute as to the officers of BCCL. Geoffrey Button and his wife have been directors since 1979. They remained directors until the date of the liquidation. Mrs Button has at all material times been the Secretary. James Button was appointed a Director on 10th May 1999 and resigned on 24th July 2004. 3.3 Shareholding One of the unfortunate features of this case is that BCCL's statutory books cannot be found. I am quite satisfied that statutory books were kept. Mr North told me that he had seen them from time to time. However they were not found following the liquidation. The Nominal Capital of BCCL is £10,000. The paid up capital is £4,000 divided into 2,000 "A" shares of £1 each and 2,000 B shares of £1 each. There is no doubt about the ownership of the A shares until 31st July 1999. 1,999 A shares were held by Geoffrey Button; the remaining A share was held jointly by Geoffrey Button and his wife. The Director's report attached to the 1999 Financial Statement suggests that none of the B shares were paid up at that stage. However the report attached to the 2000 Financial Statement suggests that on 1st August 1999 Geoffrey Button owned all of the 2,000 B shares. It also records that by 31st July 2000 Geoffrey Button had transferred 300 A shares and 300 B shares to James Button. The report for 31st July 2001 records that Geoffrey Button had transferred a further 680 A and B shares to James Button. Thus at that time James Button owned

49% of BCCL. The reports in the 2002 and 2003 Financial Statements confirm this shareholding. Geoffrey Button gave evidence to the effect that shares were transferred to his son. Mr North gave evidence to the effect that he had prepared the share transfer forms and had seen them after they were signed by Geoffrey Button. Notwithstanding this evidence Geoffrey Button has signed a large number of documents which suggest that he holds 1,999 A shares and 2,000 B shares with the remaining A share being held jointly by Geoffrey Button and his wife. These documents include the annual return submitted to Companies House on 11th November 2000, November 2001, 21st November 2002 and 11th November 2003. Somewhat curiously each of these documents was sent to Geoffrey Britton & Co to be checked before they were submitted. Each one has a contact address of a junior employee of that firm. It would thus appear that they were not checked very carefully. In August and September 2004 Geoffrey Button signed a number of further documents relating to the liquidation which recorded a shareholding in accordance with the annual returns. It would, of course have been far better if the statutory books had been available for inspection. In the absence of the books I prefer the evidence contained in the Financial Statements to that in the annual returns. They cannot both be right. The evidence in the Financial Statements is supported by the oral evidence of both Geoffrey Button and Mr North. There is no reason to disbelieve them. Regrettably Geoffrey Button signed the Annual returns without checking them. He relied on Geoffrey Britton & Co to check that they were right. Unfortunately Geoffrey Britton & Co did not spot the error or ensure that the annual return was consistent with the Financial Statements.

3.4 Trading/ Remuneration/Dividends. During the course of the proceedings Mr North produced printouts from electronic copies of the Financial Statements for BCCL for the years ending 31/07/1999 to 31/07/2003. The following table contains a summary of some of the figures contained in the accounts.

	Fixed assets	Current assets	Net current liabilities	Net assets	Gross Profit	Net Profit after tax	Directors emoluments	Dividend	G
Button Loan A/C									
J Button Loan									
31/07/1999	155,635	201,485	(141,105)	31/07/200	161,361	214,871			
(153,350)	31/07/200	158,948	212,823	(150,457)	31/07/200	140,951	240,253	(134,478)	31/07/200
138,950	213,909	(131,559)	14,350	193,540	31,227	5,057	206,893	57,989	8,104
208,793	49,547	5,251	242,703	51,147	6,223	182,269	59,672	12,607	25,216
15,248	11,976	12,585	64,000	37,632	60,000	30,653	46,500	19,815	54,000
27,548	58,700	25,241	26,219	29,011	26,262	26,228	33,369	A/C	A number of points need to be made about the financial statements:

1. None of the documents produced to the Court were signed either by anyone on behalf of BCCL or on behalf of Geoffrey Britton & Co. This was because the documents that were produced were printouts from electronic copies of the statements. Mr North, who was responsible for the production of the accounts and who attended the meetings with the directors to discuss the accounts, told me that the accounts were all duly signed both by BCCL and Geoffrey Britton & Co. That evidence is corroborated by the fact that the Abbreviated Accounts in respect of the 31st July 2003 year are duly signed both by Geoffrey Button on an unknown date and Geoffrey Britton & Co on 24th May 2004. In those circumstances I accept the evidence of Mr North that the Financial Statements were duly signed.
2. It can be seen that a very modest sum appears in the accounts in respect of the emoluments of the Directors. However in each year there is a substantial dividend which

has been used to reduce or write off sums due to BCCL in respect of the loans made in the course of the year. In each case there is note in the Financial Statements in substantially the same terms. The note in the 31st July 2003 Financial Statements was in the following terms: During the year Mr G Button was granted an interest free loan. The maximum liability during the year was £25,241 and the loan is to be repaid by the dividend declared on the 31 July

2003. Mr J D Button was also granted an interest free loan. The maximum liability during the year was £33,369 and the loan is to be repaid by the proposed dividend declared on the 31 July 2003

3. According to Mr North this method of remunerating directors was quite common amongst small family companies. The low salary paid to the Directors meant that no National Insurance payments were due. No National Insurance payments were due on the dividend payments. 4. In the absence of the statutory books there is no documentary evidence of any resolutions passed by the directors or the members in general meeting in relation to the declaration of and payment of the dividends referred to in the Financial Statements. However it was Mr North's evidence that after he had prepared the draft accounts it was his practice to have a meeting with the directors where the accounts were discussed and approved. Especially where the directors and the shareholders were the same people there would then be a short formal meeting of the members where appropriate resolutions were passed. He believes that appropriate resolutions will have been passed every year by both the directors and the members. The resolutions will have been drafted by his firm and he has no reason to believe that the appropriate formalities were not complied with. Regrettably any notes he made of the meetings can no longer be found.

5. The figures for the loans to Geoffrey Button and James Button were prepared by Mr North from books kept by a book-keeper who was referred to at the hearing as "June". Mr North described her as very punctilious. He made it clear that the monthly figure for the loans was arrived at giving credit for the salary to which the relevant director was entitled. There is a monthly summary of the loan accounts from April 2001 to the end of March 2004 compiled by Geoffrey Britton & Co at page 202 of the trial bundle. It is unnecessary for me to set it out. All of the figures in that list were approved by the directors when they approved the accounts and not challenged by Geoffrey Button in his witness statement. 6. It will be necessary to consider the assets and liabilities recorded in the Financial Statements for 31st July 2003 in more detail when considering the arguments in relation to the invalidity of the 2003 Dividend. 3.5 The consideration of the 31st July 2003 accounts. There was a difference in the recollection of Geoffrey Button and Mr North as to the meetings that were held in relation to these accounts. Geoffrey Button thought that there were 2 meetings – one in March 2004 and the other in April 2004. Geoffrey Button, however, readily admitted that the relevant events took place nearly 7 years ago; he was 72 and not in good health. He had suffered amongst other things from a stroke. There were many detailed questions that he was unable to answer when questioned. In those circumstances, whilst I am quite satisfied

that Geoffrey Button was honestly trying to tell me what he remembered I prefer the evidence of Mr North. According to paragraphs 8 to 10 of Mr North's witness statement:

1. The directors reviewed the accounts and agreed that a final dividend of £58,700 be paid for the year. It was agreed that these dividends be voted and credited to the directors loan accounts. According to the monthly summary prepared by Geoffrey Britton & Co the sums due on the loan accounts on 31st July 2003 were £29,935.88 owed by Geoffrey Button and £28,763.36 by James Button. The total due was thus £58,699.24.
2. The directors were advised that in order to receive dividends in the future there had to be distributable reserves. They were advised that payments be processed through the PAYE system
3. There was also a discussion about the interim dividend for the period from 1 st August 2003 to 31st March 2004. The directors considered that there were sufficient reserves to pay an interim dividend and that BCCL was profitable. Accordingly an interim dividend of £41,463 was proposed to clear the overdrawn balances on the two loan accounts. According to the figures in the monthly summary the amounts debited to the loan accounts between August 2003 and March 2004 were: 31/8/2003 30/9/2003 31/10/2003 30/11/2003 31/12/2003 31/1/2004 29/2/2004 31/3/2004 G. Button 1,870.00 2,923.65 2,638.32 2,250.00 17.58 2,081.80 2,532.84 3,896.94 18,211.1 J Button 2,988.99 3,616.28 3,305.26 2,301.80 1,623.36 3,326.19 3,464.37 2,626.80 23,253.05 The total loaned was accordingly £41,464.18 Mr North was asked what documents were before the Directors when the decision was made. He agreed that the March 2004 figures were not available, that there was no balance sheet or profit and loss account. Geoffrey Button had a bespoke stock record system which he could use to obtain information quickly. This was all that was before the meeting. There was a discussion as to whether BCCL was a going concern in April 2004. He was aware of a problem with Crown debts but not that there were County Court judgments against BCCL. He was not aware of any problems with sales. 3.6 The Financial position as at April 2004 On 10th September 2004 Geoffrey Button signed a document to be used at the creditors meeting which included a history of BCCL. It included the following paragraphs: The company had three months when trade suddenly decreased that led to the Company's cash flow suffering. The Company did not have an overdraft arrangement with the bank and at the start of 2004 the Company's poor cash flow meant that we were unable to pay H M Customs and Excise and the Inland Revenue. The Company began to experience creditor pressure from these two organisations and this led to the directors taking professional advice. In March and April 2004 there were 3 county court debts registered against BCCL. Two of these were small (less than £500). The third registered on 5th April 2004 was for £8,092. The proof of debt submitted by the Inland Revenue shows that £3,030 was due in respect of Corporation Tax from 2002, that a total of £5,127 was due in respect of unpaid PAYE/NIC contributions for 2003/2004 and £15,918 in respect of unpaid PAYE/NIC for 2004/2005. It seems clear that BCCL was not in a position to pay its debts as they fell due. In cross-examination Mr North said that if he had known about the debts he would not have advised that the assets could be valued on a going concern

basis. 3.7 Further Payments made after 31st March 2004 An analysis of the records by the Liquidators has shown that payments totalling £22,759.24 were made between April 2004 and the date of the CVL: G. Button 2,432.56 J Button 2,947.29 1,571.31 4,174.01 2,979.87 2,011.18 2,086.00 3,766.79 330.00 460.23 30/4/200 31/5/200 30/6/200 31/7/200 31/8/200 TOTAL 9,399.74 13,359.50 As already noted Geoffrey Button now asserts that these sums are to be treated as salary rather than loans on the basis of the advice received from Mr North. However none of the formalities necessary making Geoffrey Button and James Button salaried employees was undertaken. There are no documents in relation to it. The book keeper was not informed at the time. Furthermore as can be seen the sums paid to Geoffrey Button and James Button each month were different, no relevant PAYE records were made in respect of these sums, no PAYE payments were made and James Button appears to have received payments after a time when he ceased to be a director. In all the circumstances I cannot accept Geoffrey Button's argument that these sums are to be treated as salary. In my view they were loans by BCCL to the directors.

3.8 Detailed comments on the 2003 Financial Statements. Ms Jackson drew my attention to three areas of the 2003 Financial Statements: The Fixed Assets The fixed assets are shown in the balance sheet as being £138,950. The largest element of this is the value of a wholly owned subsidiary – GDCO 11 Ltd. In the accounts GDCO 11 Ltd is valued at £126,035. This is the same value as appeared in the Financial Statements for 31st July 2002. The accounts of GDCO 11 Ltd show that its net asset value was only £116,598 having made a loss of £19,957 in the year. Ms Jackson accordingly submits that the value of the investment should have been reduced by the amount of the loss. In fact, as appears in Note 9 of the accounts GDCO 11 Ltd has been valued at its cost value. Note 1.5 suggests that it should have been valued at cost less provision for diminution in value. Whilst the loss is noted in the accounts the value has not been reduced. In fact there is a somewhat artificial nature to the value of the investment. As Mr North explained and as is clear in the accounts its principal asset is "Debtors" which are valued at £224,062. Included in that figure is a debt of over £102,000 owed by BCCL to GDCO 11 Ltd. Thus almost all of GDCO 11 Ltd's net asset value is represented by a debt owed by BCCL to it. Thus when the Liquidators valued GDCO 11 Ltd at a nominal value they took into account the debt owed by BCCL to it. The Current Assets – stock In the Financial Statements for July 31st 2003 the current assets were valued at £213,909 with the stock being valued at £143,045. According to Note 1.6 stock was supposed to be valued at the lower of cost or net realisable value. In the Statement of Affairs Geoffrey Button valued the stock at only £3,100. This raised the question of whether the valuation of £143,045 was open to challenge. According to Mr North Geoffrey Button kept an accurate record of the cost price of the stock which was kept on his computer. He also confirmed that from time to time Geoffrey Britton & Co would carry out a stock check on a sample of the stock. Geoffrey Button said that the dyes did not deteriorate by being kept and that there was no reason to lower the valuation because of age. Both Geoffrey Button and Mr North confirmed that there was no valuation of the stock. In cross-examination Mr North acknowledged that the valuation of £143,045 was only valid on a "going concern" basis. On a forced sale there would have to be a very substantial reduction.

The Current Liabilities The Creditors falling due within a year are shown as £345,468. It is

for this reason that there are net current liabilities of £131,559. However the debt of £102,000 odd to GDCO 11 Ltd was not being enforced. Equally, according to Mr North, a further debt of £100,000 or so in favour of the directors' pension fund which owned the building was not being enforced. There was no reason to believe that either of those debts was likely to be enforced. With that support there were net current assets.

4 Loans As all of the transactions took place before January 1 st 2007 the law is governed by the Companies Act 1985. Under section 330(2)(a) a company is prohibited from making a loan to a director. None of the exceptions in sections 331 to 338 have any application. Section 341 deals with the consequences. It provides, so far as is relevant: 341.—(1) If a company enters into a transaction or arrangement in contravention of section 330, the transaction or arrangement is voidable at the instance of the company unless— (a) restitution of any money or any other asset which is the subject matter of the arrangement or transaction is no longer possible, or the company has been indemnified in pursuance of subsection (2)(b) below for the loss or damage suffered by it, or (b) any rights acquired bona fide for value and without actual notice of the contravention by a person other than the person for whom the transaction or arrangement was made would be affected by its avoidance.

- (2) Where an arrangement or transaction is made by a company for a director of the company or its holding company or a person connected with such a director in contravention of section 330, that director and the person so connected and any other director of the company who authorised the transaction or arrangement (whether or not it has been avoided in pursuance of subsection (1)) is liable— (a) to account to the company for any gain which he has made directly or indirectly by the arrangement or transaction; and (b) (jointly and severally with any other person liable under this subsection) to indemnify the company for any loss or damage resulting from the arrangement or transaction Thus each of the loans contravened section 330 when they were made. It is common ground that all three directors were aware and approved of the loans when made. They accordingly came under a duty to indemnify BCCL in respect of any loss or damage resulting from the loans. In fact the loans up to 31st July 2003 were repaid by the Final Dividend of £58,700; the amounts loaned between 31st July 2003 and 31st March 2004 were repaid by the Interim Dividend of £41,463. If therefore the Dividends were validly declared and paid there is no liability in respect of these loans. The Liquidators contend that both the Final and the Interim Dividend were invalid and that accordingly all three directors are accordingly liable to repay them. The only defence (apart from limitation) in respect of the monies paid after March 2004 is that the moneys were paid as salary rather than loans. For the reasons I have given I do not accept that the monies are to be treated as salary.
- 5 The Dividends
- 5.1 The Final Dividend BCCL's articles incorporated Table A of the 1948 Companies Act.. Articles 114 to 116 are relevant. Under Art 114 BCCL was empowered to declare dividends in general meeting. Under Art 115 the directors were empowered to pay such interim dividends as appear to be justified by the profits of the Company. Under Art 116 a dividend can only be paid out of profits. Under section 263 of the 1985 Act a company may only make a distribution out of profits available for the purpose. Section 270 – 276 are for determining whether a

distribution may be made without contravening section 263. Under section 270(2) the amount of a distribution is determined by reference to specified items in the company's accounts. These items include the profits, losses assets, liabilities, share capital and reserves (including undistributable reserves).. Under section 270(3) the relevant accounts are its last annual accounts which were laid in accordance with section 241 before a general meeting of the Company. Under s 270(5) the relevant section is treated as contravened unless the statutory requirements about the accounts are complied with in respect of the distribution. Section 271 provides: '(1) If the company's last annual accounts constitute the only accounts relevant under section 270, the statutory requirements in respect of them are as follows.

- (2) The accounts must have been properly prepared in accordance with this Act, or have been so prepared subject only to matters which are not material for determining, by reference to items mentioned in section 270(2), whether the distribution would contravene the relevant section; and, without prejudice to the foregoing--(a) so much of the accounts as consists of a balance sheet must give a true and fair view of the state of the company's affairs as at the balance sheet date, and (b) so much of the accounts as consists of a profit and loss account must give a true and fair view of the company's profit or loss for the period in respect of which the accounts were prepared.'
- (3) The auditors must have made their report on the accounts under section 235; and the following subsection applies if the report is a qualified one ... Ms Jackson submitted that there was no evidence of any general meeting here. She also made the point that in the light of the decision in *Bairstow v Queens Moat* [2001] BCLC 531 (paragraph 36) it was not possible for the members to rely on the Duomatic principle to avoid this requirement. If there is an election under section 252 of the Act the necessity for laying accounts before a general meeting may be replaced by an obligation to send the accounts to the members. Thus it is possible that Ms Jackson's first submission is not correct. The Financial Statements for July 2003 are unaudited as BCCL is exempt from audit and the Directors took advantage of the exemption. In those circumstances there is no necessity for an auditors report under section 271(3). In the result the critical question is whether the Financial Statements for 31st July 2003 presented a true and fair view of the state of BCCL. To my mind there is force in both of the criticisms made by Ms Jackson. It is difficult to justify the failure to take into account the losses of GDCO 11 Ltd in the balance sheet value. Indeed the whole of the treatment of GDCO 11 Ltd seems artificial. Equally I am far from convinced that the "net realisable value of the stock" was anything like the amount in the accounts. As already noted the figure should have been the lower of cost or net realisable value. The figure in the Financial Statements was plainly the cost of the stock as supplied by Geoffrey Button. No attempt was made to value the stock. The strikingly low figure obtained for the stock by the Liquidators leads me to believe that the net realisable value was substantially less than the cost. In the circumstances I am not satisfied that that the Financial Statements for July 31st 2003 gave a true and fair value of BCCL. In those circumstances I agree that the Final Dividend was unlawful 5.2 The Interim Dividend In my view there can be little doubt that the interim dividend was invalid. There were no interim accounts before the directors at the time that

the directors decided on the dividend. At that time BCCL was unable to pay its debts as they fell due. It was not paying the Revenue; there were County Court judgments against it. No attempt was made to put a realisable value on the stock. It is noteworthy that only a matter of months later it was valued at only £3,100. In the absence of proper interim accounts the Directors could not form a reasonable judgment as to the items referred to in section 270(2). It follows that the Interim Dividend was also unlawful.

6 Limitation It follows that this claim succeeds but for the issue of limitation. These proceedings were issued on 9th September 2010, that is to say more than 6 years after the payments were made. Each of the Respondents are fiduciaries. For the purpose of determining the appropriate limitation period a breach of fiduciary duty is treated as equivalent or analogous to a breach of trust. In general a 6 year limitation period applies to claims against fiduciaries either by direct application of the Limitation Act 1980 or by analogy with that statute.

1. The six year period does not apply where the claim is in reality a claim to recover trust property such as a case where director of a Company has obtained property from the Company in breach of trust. It follows from this that Geoffrey Button and James Button cannot rely on a limitation defence in respect of loans they have themselves individually received. See Snell' Equity – 32nd Edition paragraph 7-063 and the authorities cited at footnote 599 – 601. However Ms Jackson seeks to make each of the directors jointly liable in respect of all of the loans. She contends that as the loans were unlawful the directors were under a continuing duty to seek to recover them. She contends that that continuing duty continued until the date of the liquidation in respect of Mr and Mrs Geoffrey Button and up till the date of the resignation of James Button. She relies on paragraph 82 of a judgment of Judge Simon Brown QC in *Re Mumtaz Properties* to which I was referred. Judge Brown QC gives no authority for his assertion that there was this continuing duty and no other authority was cited by Ms Jackson. To my mind the joint obligation on the directors in the case was the obligation in section 341(2)(b) of the 1985 Act to indemnify the Company in respect of its losses as a result of the illegal loans. That obligation arose when the loans were made and was not in my view a continuing obligation. It follows that I do not agree with the view of Judge Brown QC that the obligation was continuing. In my view the joint claims became statute barred on the sixth anniversary of the relevant loan. For completeness it is clear from the decision in *Re Eurocruit Ltd* [2007] BCLC 598 that section 212 is a procedural section and a claim under section 212 does not have a limitation period distinct from the Company's underlying claim. Thus no new cause of action was created when the Liquidators were appointed on 10th September 2004.

7 Conclusion In my view therefore the claims against Geoffrey Button and James Button succeed in respect of the moneys actually received by them. The claim against Mrs Button fails. Subject to arithmetic and questions of interest there will be judgment against Geoffrey Button for £57,546.50 (£29,935.88 + £18,211.13 + £9,399.74) and against James Button for £65,375.91 (£28,763.36 + £23,253.05 + £13,359.50).

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