

ENGLAND AND WALES / JUDGMENT

Mannarest Ltd, Re

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Neutral Citation Number: [2026] EWHC 326 (Ch) IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS IN BRISTOL INSOLVENCY AND COMPANIES LIST (ChD) Case No: CR-2024-BRS-000114 Bristol Civil Justice Centre 2 Redcliff Street, Bristol, BS1 6GR Date: 18 February 2026 Before : HHJ PAUL MATTHEWS (sitting as a Judge of the High Court)

- ----- IN THE MATTER OF MANNAREST LTD AND IN THE MATTER OF THE INSOLVENMCY ACT 1986 Between :

(1) DAVID GERRARD KIRK

(2) DANIEL JEEVES Applicants

- and - NO RESPONDENT

- -----

- ----- Govinder Chambay (instructed by Stephens Scown LLP) for the Applicant Hearing dates: 17 January 2025

- ----- This judgment was handed down remotely at 10:30 on 18 February 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives HHJ Paul Matthews Approved Judgment HHJ Paul Matthews :

Introduction

Re Mannarest Ltd, CR-2024-BRS-000114 1. 2. On 17 January 2025, I heard an application, by notice dated 24 October 2024, by the joint liquidators of Mannarest Ltd (“the company”) for (1) an order placing the company into administration; (2) directions for the removal and release of the joint liquidators; and (3) an order permitting the administrators to make distributions to creditors of the company who are neither secured nor preferential creditors. The application was unopposed, and only the applicants were represented at the hearing. At the end, I announced that I would make the order as sought, but that I would give my reasons in writing thereafter. Unfortunately, although I started to write the reasons, I had to put them aside in order to deal with more urgent matters, and thereafter I completely overlooked the need to complete them. It was only on a further application in the same matter made recently to me that I was reminded by the applicants that I had not yet given my written reasons for my original decision. I am very sorry for the delay in supplying these. This judgment is intended to make good my omission.

Background

3. 4. The company was incorporated in 1964. By the time of the application before me all the shares in the company belonged to Charles Gabbitass. He was also a director of the company. The only other director at that time was a Mr Priday, who was not a shareholder, but whose own company (Prudens Jevro Ltd) was a creditor of the company in the sum of £33,600. The company carried on the business of a residential care home for elderly people, in Plymouth. Because of difficulties which the company had in its dealings with the Care Quality Commission, the number of residents at the home fell to a level which was economically unsustainable. The company ceased trading in March 2023, and the following month entered creditors' voluntary liquidation, when the joint liquidators were appointed. There were no secured creditors. Unsecured creditors amounted to £413,563.17, but when statutory interest and liquidation expenses were added that figure increased to £485,972.71. As against that, on 30 September 2024, the company had only £2,398.23 cash in hand. However, it also owned the property comprising the care home and the land on which it stood. Mr Gabbitass and Mr Priday made a successful application for planning permission to convert the property into residential flats. This no doubt enhanced its value, at least to a potential developer. I understood at the hearing that interest had already been expressed, even at that early stage. This application 5. However, rather than allow the liquidators to sell the land to a developer, Mr Gabbitass and Mr Priday conceived the idea of raising enough money to pay off all the creditors, lending it to the company, to pay the debts, thus rescuing the company from liquidation, and then selling or developing the land themselves. But, in order to avoid having to purchase the land from the liquidators, which would require the payment of stamp duty land tax, they proposed that the company pass from liquidation to administration for the purpose of paying off all the creditors except HHJ Paul Matthews Approved Judgment Re Mannarest Ltd, CR-2024-BRS-000114 6. 7. Prudens Jevro Ltd (Mr Priday's company), which had agreed to postpone its claim until the development was complete. (There might also be the possibility of benefiting from corporation tax loss relief.) To this end two entities obtained the necessary finance and deposited it in a solicitors' bank account. The solicitors undertook to release £500,000 to the joint liquidators on their being appointed as administrators, so that all the liabilities could be met (except that to Prudens Jevro Ltd). The joint liquidators, who had the most up to date knowledge of the company's affairs, consented to be so appointed. They also applied for themselves to be removed as joint liquidators and to be released when the Secretary of State determined. They also sought to have conferred on them as administrators all the powers in that behalf under the 1986 Act. There were four further points which I bore particularly in mind. The first was an undertaking from Mr Priday that he would not seek to recover the Prudens Jevro debt until the other company liabilities had all been paid in full. The second was a confirmation from the directors that they would not seek to recover the loan of £500,000 from the company until after the conclusion of the administration. The third was an undertaking by Mr Priday that, if the £500,000 were not sufficient to meet the company's liabilities or the expenses of the administration, he would contribute any further monies needed. The fourth point was

that the liquidators had conducted their statutory investigation into the conduct of the company's affairs, and had failed to identify anything indicating fault or wrongdoing on the part of the existing directors. The law 8. The law relevant to this application is as follows. First of all, the Insolvency Act 1986, Sch B1, paragraph 38, provides as follows: "(1) The liquidator of a company may make an administration application.

- (2) If the court makes an administration order on hearing an application made by virtue of sub-paragraph (1)—
 - (a) the court shall discharge any winding-up order in respect of the company,
 - (b) the court shall make provision for such matters as may be prescribed,
 - (c) the court may make other consequential provision,
 - (d) the court shall specify which of the powers under this Schedule are to be exercisable by the administrator, and
 - (e) this Schedule shall have effect with such modifications as the court may specify." 9. Paragraph 11 of the same schedule provides: "The court may make an administration order in relation to a company only if satisfied— HHJ Paul Matthews Approved Judgment Re Mannarest Ltd, CR-2024-BRS-000114

- (a) that the company is or is likely to become unable to pay its debts, and
 - (b) that the administration order is reasonably likely to achieve the purpose of administration."
10. As to sub-paragraph (a), paragraph 11(1) of the schedule provides that the phrase "unable to pay its debts" has the same meaning as it does for section 123 of the Act. Section 123(1) of the Act provides for several alternative definitions of the phrase, any one of which will suffice. That contained in section 123(1)(e) is: "if it is proved to the satisfaction of the court that the company is unable to pay its debts as they fall due". This is a form of so-called "cash-flow" insolvency, as opposed to so-called "balance sheet" insolvency (which is covered by section 123(2)). 11. As to the standard of proof, this is the ordinary civil standard. So, it is necessary to show only that it is more likely than not that the company is or will become unable to pay its debts "as they fall due". The test imposed by these words is concerned, as Lord Walker (with whom all the other Justices agreed) put it in *BNY Corporate Trustee Services Ltd v Eurosail-UK 2007 3-BL PLC* [2013] 1 WLR 1408, [37], "not simply with the petitioner's own presently-due debt, nor only with other presently-due debt owed by the company, but also with debts falling due from time to time in the reasonably near future. What is the reasonably near future, for this purpose, will depend on all the circumstances, but especially on the nature of the company's business. ... [O]nce the court has to move beyond the reasonably near future ... any attempt to apply a cash-flow test will become completely speculative, and a comparison of present assets with present and future liabilities (discounted for contingencies and deferment) becomes the only sensible test." 12. As to sub-paragraph (b), and achieving "the purpose of administration", this purpose is identified by paragraph 3(1) of the same schedule: "The administrator of a company must

perform his functions with the objective of —

- (a) rescuing the company as a going concern, or
 - (b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or
 - (c) realising property in order to make a distribution to one or more secured or preferential creditors.” However, it is necessary to demonstrate only that there is a real prospect that the order will achieve the statutory purpose, but, since there is but a single purpose which can be fulfilled in any of three ways, the applicants do not need to identify in advance with any certainty which of the three objectives will be obtained: *Hammonds v Pro- Fit USA Ltd* [2007] EWHC 1998 (Ch), [20]. HHJ Paul Matthews Approved Judgment *Re Mannarest Ltd*, CR-2024-BRS-000114 13. In considering whether to make the order, the court has a wide discretion, to be exercised judicially, taking account of the interest of all the relevant parties and the purposes of the legislation. In *Roundtree Ventures Ltd v Oak Property Partners Ltd* [2018] BCC 135, Sir Geoffrey Vos C (with whom David Richards LJ and Asplin J agreed) said: “24. It is necessary first in my judgment to understand that the discretion provided to the court in para 13 of Sch B1 is of a wide and general nature. It is not constrained in any way. Any appellate court considering a particular exercise of such a discretion must ensure that nothing it says operates so as to cut down the width of the statutory discretion that parliament has given to the court. The effect of this proposition is that a multitude of factors may properly be taken into account in deciding in any particular case whether it is appropriate to make an administration order when the two statutory preconditions have been held to be fulfilled. Nothing that I say today should be taken as limiting the factors that can properly be considered. The circumstances are likely to be infinitely variable. The interests of secured creditors, preferential creditors, unsecured creditors and the company itself will change from case to case.” 14. Paragraph 64A of the same schedule provides for distributions to creditors of the company in respect of moratorium debts and priority pre-moratorium debts. As I understand the matter, there are none in either category in this case. Paragraph 65 of the same schedule, as amended, provides: “[1] If the assets of a company are sufficient to meet any debts or other liabilities payable under paragraph 64A in full, the administrator of the company may make a distribution to any other creditor of the company.]
- (2) [Sections 175 and 176AZA] shall apply in relation to a distribution under this paragraph as [they apply] in relation to a winding up.
 - (3) A payment may not be made by way of distribution under this paragraph to a creditor of the company who is neither secured nor preferential [unless—
 - (a) the distribution is made by virtue of section 176A(2)(a), or (b)] the court gives permission.”
15. In *Re MG Rover Belux SA/NV* [2007] BCC 446, HHJ Norris QC (as he then was) said: “7. The discretion given by para 65(3) is entirely at large, and it is not entirely clear from the terms of Sch B1 what are the relevant considerations. The matter was considered by Rimer J

in *Re GHE Realisations Ltd* [2005] EWHC 2400 (Ch); [2006] BCC 139; [2006] 1 WLR 287, and I respectfully adopt the guidance that he there gave. I doubt however that it is possible to draw up a definitive list of considerations relevant to all cases (given the width of the discretion), and the considerations will obviously vary from case the case. The considerations relevant to the grant of permission to distribute ‘the prescribed part’ (which para 65(3) appears to say must be sought) are likely to be markedly different from the considerations relevant to cases like the present. The following considerations have appeared to me material in this case: HHJ Paul Matthews Approved Judgment *Re Mannarest Ltd*, CR-2024-BRS-000114

- (a) The matter is to be judged at the time when permission is sought.
- (b) The court must at that time be satisfied that the proposed distribution is conducive to the achievement of the then current objectives of the administration.
- (c) The court must be satisfied that the distribution is in the interests of the company’s creditors as a whole (because para 3(2) of Sch. B1 says that the administrator must perform his functions in that manner).
- (d) The court must be satisfied that proper provision has been made for secured and preferential creditors (for the requirement to obtain the permission of the court seems to be directed at their protection).
- (e) The court must consider what are the realistic alternatives to the proposed distribution sought by the administrators, consider the merits and demerits of adopting a course other than that proposed by the administrators and assess whether the proposed distribution adversely affects the entitlement of others (when compared with their entitlement if one of the other realistic alternatives were to be adopted).
- (f) The court must take into account the basis on which the administration has been conducted so far as the creditors are concerned (under the original proposals, any modification to those original proposals, or any indications given in any reports to creditors), and in particular whether the creditors have approved (or not objected to) any proposal concerning the relevant distribution;
- (g) The court must consider the nature and terms of the distribution.
- (h) The court must consider the impact of the distribution upon any proposed exit route from the administration.” 16. The Insolvency (England and Wales) Rules 2016, rule 3.14, provides: “Where the court makes an administration order in relation to a company on an application under paragraph 37 or 38 of Schedule B1, the court must also include in the order—
 - (a) in the case of a liquidator appointed in a voluntary winding up, the removal of that liquidator from office;
 - (b) provision for payment of the expenses of the winding up;

- (c) such provision as the court thinks just relating to—
- (i) any indemnity given to the liquidator, (ii) the release of the liquidator, (iii) the handling or realisation of any of the company's assets in the hands of or under the control of the liquidator, and HHJ Paul Matthews Approved Judgment Re Mannarest Ltd, CR-2024-BRS-000114 (iv) other matters arising in connection with the winding up; and
- (d) such other provisions if any as the court thinks just.” Discussion 17. 18. 19. 20. The applicants submitted, and I agreed, that they were entitled to make an application for an administration order under paragraph 38(1) of Schedule B1 to the 1986 Act. They also submitted, and I again agreed, that the company was “cash-flow” insolvent under section 123(1)(e) of the Act. They further said that there was a real prospect of administrators being able to rescue the company as a going concern, by reason of the loan to the company to pay off all the debts (except that of Prudens Jevro, which would be postponed), and then enabling the company to exploit its real property asset, so as first of all to repay the loan and secondly to realise a profit for its members. Repayment of the loan would not be sought until after the administration had come to an end, and the directors’ and shareholders’ interests lay in selling or developing the land successfully. Alternatively, they said that administration would result in a better outcome for creditors, because the £500,000 loan was available in the solicitors’ account, but would not be made available unless the company went into administration. Although it would then be up to the directors to sell or develop the land, out of the proceeds of which the loan could be repaid, this way the creditors would be paid more certainly and more quickly, and at less expense. In my judgment, all the requirements for an administration order were met in the present case. It seemed to me quite likely that the company could be rescued as a going concern, but that, in any event, there would be a quicker and more certain (and therefore better) outcome for creditors. I therefore decided that I should make the administration order. There is one further point. The proposed arrangement involved making distributions to creditors of the company, and so the permission of the court under paragraph 65(3) of the schedule was required. In my judgment these distributions met the criteria set out in paragraph 7 of the judgment of HHJ Norris QC in *Re MG Rover Belux SA/NV*, cited above, so far as applicable to the present case. In particular, I was satisfied that that there were no secured creditors and preferential creditors were provided for, and that there were no realistic alternatives to the proposed arrangement, given that continued liquidation posed a risk to creditors of not being paid in full, and the proposed distribution would be “conducive” to the achievement of the objects of the administration, because without permission, the payment of the creditors to rescue the company simply could not take place.

Conclusion

21. It was for the above reasons that, following the hearing, I made an order (i) putting the company into administration, (ii) appointing the applicants to be the joint administrators, (iii) conferring upon them all the powers available under the schedule and the 1986 Act, to be exercised jointly or severally, (iv) that the administrators pay the expenses of the winding up, (v) removing the joint liquidators, and (vi) releasing them from the point when the Secretary of State determined. 7
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