

ENGLAND AND WALES / JUDGMENT

Manolete Partners Plc v David Smith

COURT

IN THE HIGH COURT OF JUSTICE

Source: caselaw.nationalarchives.gov.uk · Research copy typeset by Esheria. Not court-issued or certified.

Source record

Neutral Citation Number: [2026] EWHC 1046 (Ch)**IN THE HIGH COURT OF JUSTICE****BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES****INSOLVENCY AND COMPANIES LIST (ChD)****RE: A & D JOINERY LIMITED (CRN.02827987) (in administration)****AND RE: THE INSOLVENCY ACT 1986****Case No:** CR-2024-004184**Royal Courts of Justice****Rolls Building****Fetter Lane****London EC4A 1NL****Date:** 07/05/2026**Applicant****Respondent****Before :** ICC JUDGE PRENTIS**Between :** MANOLETE PARTNERS PLC

- and -

DAVID SMITH

Jon Colclough (instructed by MD Law (Yorkshire) LLP) for the Applicant

Lauren Kreamer (instructed by Kuit Steinart Levy LLP) for the Respondent

Hearing dates: 3, 4, 6 March 2026.

JUDGMENT

- ----- High Court Approved Judgment Re: A & D Joinery Limited (in administration) ICC JUDGE PRENTIS :

Introduction

1. A & D Joinery Limited (the “Company”) was incorporated by Anthony Lowe, the “A”, and his brother-in-law David Smith, the “D”, on 17 June 1993, as a continuation of their business set up in 1978 when Mr Smith was 18. Mr Lowe retired through ill- health; and from 14 August 2012 until 27 July 2021 Mr Smith was sole director and held all four of the issued £1 A ordinary shares, and two of the £1 B ordinary shares, his wife Anne holding the other two. On 27 July 2021 the shares were sold to A&D MTE Ventures Limited (“Ventures”), Mr Smith receiving, in four tranches, £748,270 (Mrs Smith’s receipt being nominal). The share sale mechanism was one described by Mr Smith’s expert, Ashley Hayman, as common: Ventures’ monetary obligations under the SPA were met by the Company’s cash. Almost immediately, and for the first time in its considerable trading history, the Company found itself in financial difficulties. On 29 September 2021 it ceased to trade, and on 9 November 2021 its directors appointed Claire Dowson and Kris Wigfield administrators. On 21 February 2024 they effected an assignment of the Company’s claims against various parties, including Mr Smith, to Manolete Partners plc (“Manolete”). In July 2024 it issued the claim and application of which this is the trial, averring a primary case that the monies paid under the SPA were a transaction at an undervalue under s.238 Insolvency Act 1986; or made in breach of Mr Smith’s fiduciary duties; or, so far as the payments were after his directorship, in knowing receipt. 2. I am grateful to both Mr Colclough and Ms Kreamer for their honed arguments. Transactions at an undervalue: law 3. By s.238(4) “a company enters into a transaction with a person at an undervalue if— (a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration, or Page 2 High Court Approved Judgment Re: A & D Joinery Limited (in administration)
- (b) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company”. 4. Where there has been such a transaction at a relevant time, then an administrator or liquidator of the company (or their assignee: s.246ZD) may make an application on which, by s.238(3): “the court shall... make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction”. 5. s.240 defines “relevant time” such that a transaction at an undervalue is challengeable if entered into within 2 years of the “onset of insolvency”, which is here, by s.240(3) (b), when the notice of intention to appoint was filed; and when the company was, s.240(2)(a), “at that time unable to pay its debts with the meaning of section 123”, or

- (b) “becomes unable to pay its debts within the meaning of that section in consequence of the transaction”. s.123 adverts both to a balance sheet test, s.123(2), and to a cashflow test, s.123(1)(e). s.240(2) also presumes the insolvency test to be satisfied where the transaction was with a person connected with the company, “unless the contrary is shown”. Here that is, by s.249(a), when Mr Smith was a director of the Company; and at the relevant times within such period, the burden would be on him to demonstrate its solvency. 6. Examples of orders following a finding of a transaction at an undervalue are provided by s.241(1). 7. s.238(5) allows a particular defence. “The court shall not make an order under this section in respect of a transaction at an undervalue if it is satisfied—
- (a) that the company which entered into the transaction did so in good faith and for the purpose of carrying on its business, and Page 3 High Court Approved Judgment Re: A & D Joinery Limited (in administration)
- (b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company.” 8. The Court of Appeal has recently expounded on the policies behind s.238 in *Taqi Bratani Limited v Fujairah Oil and Gas UK LLC* [2025] EWCA Civ 1669. At [33] Falk LJ, with whom Sir Geoffrey Vos MR and Newey LJ agreed, stated that its: “underlying objective... is to uphold the principle of pari passu distribution of the assets of an insolvent company between its creditors, in an order of priorities in which holders of interests in the equity of the company rank last”. 9. At [37] she applied that objective to the interpretation of s.238(5), in a context in which, as here, the intended beneficiary of the transaction was also a shareholder. “The fact that s.238(5) contains different and more challenging tests from the perspective of a defendant than s.423(3) reflects the fact that insolvent companies should not, as a general rule, enter into transactions that deplete assets available for creditors, undermining the pari passu principle by instead preferring the interests of their shareholders. It is unsurprising in those circumstances that the defence available under s.238(5) is relatively narrowly targeted. In contrast, s.423 is not restricted to cases of insolvency”. 10. Falk LJ later returned to the s.238(5) defence, at [57]. “What s.238(5) (b) must require is a consideration of all the relevant circumstances in order to determine whether there were in fact reasonable grounds for the belief” that the transaction would benefit the company. She did so having at [43] noted that while “‘transaction’ is broadly defined by s.436 IA86 as including ‘a gift, agreement or arrangement’”, the notion that “mere linkage of some sort between transactions is sufficient to enable them to be treated as a single transaction” for s.238 must be rejected: [50]; “[r]ather, the statutory question asks whether the company (itself) ‘entered into’ a transaction at an undervalue”. 11. Falk LJ seems thereby to have expressed a narrower proposition than that put by Professor Goode in his *Principles of Corporate Insolvency Law*, 5th ed, 13-19: “...While s.238 bites only on transactions to which the company is a party, it is not necessary that all parts of the transaction should involve the same Page 4 High Court Approved Judgment Re: A & D Joinery Limited (in administration) counterparty; the section is capable of applying to a composite transaction in which there is a contract between the company and A, and a separate but linked contract between the company and B. Indeed, a contract to which the

company is not a party at all may nevertheless constitute part of a transaction entered into by the company where this is the common understanding of the parties and the company".

12. In *Re M C Bacon Ltd.* [1990] BCC 78, 92D Millett J said that where the relevant transaction was not a gift, measuring its value required: "a comparison to be made between the value obtained by the company for the transaction and the value of consideration provided by the company. Both values must be measurable in money or money's worth and both must be considered from the company's point of view".

13. In *Phillips v Brewin Dolphin Bell Lawrie Ltd* [2001] UKHL 2, [2001] 1 WLR 143, Lord Scott of Foscote remarked at [20] that s.238(4)(b): "does not stipulate by what person or persons the consideration is to be provided. It simply directs attention to the consideration for which the company has entered into the transaction. The identification of this 'consideration' is, in my opinion, a question of fact. It may also involve an issue of law... But if a company agrees to sell an asset to A on terms that B agrees to enter into some collateral agreement with the company, the consideration for the asset will, in my opinion, be the combination of the consideration, if any, expressed in the agreement with A and the value of the agreement with B. In short, the issue in the present case is not, in my opinion, to identify the section 238(4) 'transaction'; the issue is to identify the section 238(4) 'consideration'".

14. So, while the s.238 enquiry is directed at the value passing in the relevant transaction between the company and another, the assessment of value may comprehend the value received by the company under other connected arrangements; and it may therefore be that whether those arrangements are treated as part of the transaction, depending on whether a wider or narrower view of that concept is applicable, need not necessarily be of determinative concern. Page 5 High Court Approved Judgment *Re: A & D Joinery Limited (in administration)*

15. In *Brewin Dolphin* the extra-transactional consideration was the agreement by the purchaser's parent to rent from the company for four years computer equipment which it leased. In fact, before any instalment was due, the lessor terminated the leases, as they contained absolute prohibitions on assigning or subletting any of the equipment. The parent, while able to pay, refused then to do so. As Lord Scott put it at [23]: "[t]he repossession of the computer equipment, which is what happened, would, and did, bring to an end the sublease and the payment obligations of PCG. So, what was the value, in money or money's worth, of a covenant by PCG that was so precarious?".

16. He continued, at [24]: "If a covenant with the precarious character of PCG's covenant in the sublease is to have value attributed to it for section 238 purposes, the value must, in my opinion, be placed on a more firm footing than that of speculative suggestion. The actual events that took place... are in my opinion relevant".

17. He described these, and observed at [25]: "PCG's covenant, which had been precarious at the outset, had become worthless...".

18. At [26] he recorded the submission that: "these ex post facto events ought not to be taken in account in valuing PCG's sublease covenant as at [the date of the transaction]... I do not agree. In valuing the covenant as at that date, the critical uncertainty is whether the sublease would survive for the four years necessary to enable all the four £312,500 payments to fall due, or would survive long enough to enable some of them to fall due, or would come to an end before any had fallen due. Where the events, or some of them, on which the uncertainties depend have actually happened, it seems to me unsatisfactory

and unnecessary for the court to wear blinkers and pretend that it does not know what has happened... For the purposes of section 238(4)... and the valuation of the consideration for which a company has entered into a transaction, reality should, in my opinion, be given precedence over speculation". Page 6 High Court Approved Judgment Re: A & D Joinery Limited (in administration) 19. At [27] Lord Scott said that: "Where the value of the consideration for which a company enters into a section 238 transaction is as speculative as is the case here, it is, in my judgment, for the party who relies on that consideration to establish its value".

20. Ms Kreamer submitted that it was "[o]nly because of the extraordinarily speculative nature of the covenant" that regard was had in Brewin Dolphin to later events to determine value at the date of the transaction. The word "extraordinarily" is inapt. It does not accord with the generalist language used by Lord Scott. Nor does it with another decision she cites, Re Thoars, Deceased [2002] EWHC 2416 (Ch), in which at [17] Morritt V-C described three parts of the ratio of Brewin Dolphin, the third being that "the valuer is entitled, indeed bound, to take account of all other matters relevant to the determination of value as at the date of the transaction", which was in part derived from paragraph [27] of Brewin Dolphin, as above. Doubtless, the more speculative the value the greater the assistance which will be derived from the reality of hindsight; but any value which does not pass immediately on the date of the transaction will be to some degree speculative, as to which the ensuing reality may be the firmest guide. Facts and findings; transaction at an undervalue 21. In the words of Mr Smith's defence: "A&D's business was the manufacture, supply and fitting of windows and doors to commercial and domestic customers. Its four main customers were providers of social housing: HMS, Stockport Homes, Bolton At Home and Great Places Housing. They provided the majority of A&D's revenue. It had a full order book and good relations with its institutional, repeat customers". 22. His statement described it as a "solid business", which "had become a reputable brand in the North-West of England". "As the director of the business, I ensured that A&D always paid its bills on time, [and] looked after its staff, suppliers and customers. A&D has never been in Court, involved in any legal action or had any financial problems. I was proud of the business and had a good relationship with staff and customers". Page 7 High Court Approved Judgment Re: A & D Joinery Limited (in administration) 23. As put in the defence: "By the time Mr and Mrs Smith came to sell the Shares, A&D had been trading for some 34 years. It was consistently profitable, paid its liabilities (including to suppliers, employees and the Crown) on time and had built up cash reserves. It did not use an overdraft. There was no or no material risk to A&D's continued success unless its business was not managed in the same, successful way".
24. Mr Smith was an honest witness but, as the latter part of this excerpt shows, not one who could really comprehend what had gone wrong or why he should find himself facing the claim. 25. He described how he had been introduced to Michael Cotler around 2018 or 2019. Nothing came from that, as he was not then looking to sell; but when Mr Cotler called out of the blue in 2020, during covid, Mr Smith's position was different: he had been in the business a long time, and was "often working weekends and in the evening". A phased exit

over 12 months seemed attractive, especially as Mr Cotler and his business partner, Anthony Goodwin, had plans for the Company, and appeared solid individuals: they already owned two other companies “in the building/ window game”, and were planning to put together a group of around five or six, grow the revenues and then sell on. They told Mr Smith that they had “significant business experience”, including “providing support and/ or mentoring to other businesses, helping them grow and expand and increase sales and profit”. 26. There ensued “a series of discussions and negotiations over a period of time”, which resulted in a final figure of “£550,000 subject to cash at bank and purchases”. Although details are not known, Mr Smith said he had received another similar offer, but felt that Mr Cotler and Mr Goodwin offered more experience. He was also introduced to their proposed managing director, Grahame Jones, and was told of their proposed production manager who “hoped to increase production by 20% in one month”. Mr Smith considered the Company would be in safe hands. 27. At the end of 2020 he instructed 3volution, solicitors in Leeds, to act. Mr Cotler and Mr Goodwin used a firm called Consilium (not apparently solicitors). The firms “negotiated and agreed” the structure of the SPA. “The actual idea of the structure... Page 8 High Court Approved Judgment Re: A & D Joinery Limited (in administration) came from Cotler and Goodwin”. Mr Smith was reliant on his solicitors, as “I had never sold a company before so was totally new to the process”. 28. It is a pity that the 3volution file is not before the court, as Mr Smith has not requested it: it would disclose the genesis of the SPA and its carrying through. Although Mr Smith now says the completion date was 27 July 2021, and Manolete is prepared to accept that as ultimately making no difference, he had also given a 28 July date, which is corroborated by certain evidence, and had originally been relied on by Manolete. 29. It is clear that the in-principle agreement was arrived at months before completion. On 5 February 2021 the Company received into its current account a £250,000 CBILS loan from Funding Circle, which five days later was transferred to its second account. We only have an unexecuted loan document, but by its clause 6e the Company represented and warranted that “this CBILS Loan will be used to support business activity within the UK”; and by 6f that “the purpose of this CBILS Loan is for working capital to support the Borrower’s business or to fund expansion/ growth of the Borrower’s business”. Among the Events of Default were by clause 4.2d that “the Borrower uses the proceeds of the CBILS Loan for a purpose other than that specified in the Loan Application”. Were there an Event of Default, “Funding Circle may demand early repayment of the Total Amount Payable together with any fees and costs”.

30. Within the suite of SPA and related documents, some unsigned and all undated, is a Disclosure Letter which states that “[t]he Company entered into a CBILS loan at the request of the Buyer”. Mr Smith confirmed that was correct: the CBILS loan was taken because Mr Cotler wanted it: the scheme was coming to an end, and this was to be used to help grow the Company. He denied it was taken to ensure that the Company had the money to pay Mr Smith for his shares. 31. The parties to the SPA were Mr and Mrs Smith, and Ventures. The Price was the Completion Payment of £586,233, subject to adjustments for Cash Excess, Cash Shortfall and Recent Debts Shortfall; the cash figures were predicated on a cash balance of

£500,000 at 16 July 2021. There were also to be 24 monthly instalments of £12,583; and a calculation, again said to be at 16 July but possibly intended to mean Page 9 High Court Approved Judgment Re: A & D Joinery Limited (in administration) at the completion date or another date nearer it, of a figure for recent debtors, against a baseline of £330,000. 32. By clause 3.2 the Completion Payment was to be met as to £433,872 at Completion, and £152,360 on or before 28 July 2021. There was also to be a payment of £149,454 on or before 30 July, which is presumably the figure for the adjustments. 33. By clause 4.2 Completion was to take place at the Buyer's offices, or other agreed venue. Schedule 3 identified the matters which were to occur then, including the delivery of transfer forms for the Sale Shares; Mr Smith's resignations as director, employee and secretary; the appointment of those nominated by the Buyer; and changes to the bank mandates.

34. Mr Smith said that the completion meeting was on 27 July; that he and his wife came off the bank mandate then, and did not access the Company's accounts or make payments after that; and that although Companies House recorded his cessation on 28 July, that was an error. 35. It is the arrangements over payment of the purchase price which are the focus of this case. 36. It was planned that the Company's cash would be used to pay the Smiths. 37. There is a signed Letter of Direction, referring to an SPA "dated 22 July 2021". It is from the Company to Mr Smith and to Ventures. Materially, it reads: "1. DS is currently holding the sum of £433,872.51 in his personal account on bare trust for the Company;
 2. The Company hereby directs DS to transfer such sum to the Buyer on the Company's behalf subject to the terms of a loan agreement entered into between the Buyer, as borrower, and the Company, as lender, immediately after Completion;
 3. The Buyer hereby acknowledges receipt of such sum on such terms from the Company and hereby agrees and directs DS to retain such sum and apply it in Page 10 High Court Approved Judgment Re: A & D Joinery Limited (in administration) satisfaction of the first payment of the Completion Payment as referred to in clause 3.2.1 of the SPA; and
 4. DS accordingly acknowledges receipt of such sum and confirms its application in accordance with clause 3.2.1 of the SPA". 38. There was, of course, no actual transfer of sums from Mr Smith to Ventures and back again. 39. The monies were met in this way. On 22 July the closing balance on the current account was £305,145. By 23 July that was £534,107, including £113,000 transferred from the second account, which left £250,004 in the latter, which must represent the CBILS loan. By 26 July the current account closing balance was £548,454. On 27 July £40,000 was received into the account, £30,000 from Training for Growth Limited, connected with Mr Goodwin, and £10,000 from PPEC (UK) Ltd, connected with Mr Cotler. The Company transferred £433,872 and £152,360 to Mr Smith, being the two elements of the Completion Payment to be met by 28 July.
40. Mr Smith was keen to say that the 27 July transfers were effected by his wife at the completion meeting, and only after Mr Goodwin and Mr Cotler had been appointed the directors; although his defence is that he ceased to be a director "following the completion";

whatever, they were transfers planned and agreed while he was a director. 41. It is not clear why the Letter of Direction should refer only to the £433,872 paid to Mr Smith. 42. That left £7,471 in the Company's account, which was boosted the next day by the transfer in of the £250,000 CBILS loan monies. 43. By the close of 29 July the balance in the account was £227,590. On 30 July Ventures paid in £100,000, and Aldermore Bank £45,000 under its invoice discounting facility. The Company paid Mr Smith the £149,454 obligated for that day, leaving a closing balance of £258,721. The Ventures loan derived from its own CBILS application, which had been guaranteed by the Company. 44. On 2 August Training for Growth and PPEC were repaid their loans. Page 11 High Court Approved Judgment Re: A & D Joinery Limited (in administration) 45. On 27 August the Company paid Mr Smith £12,583, being the first of the monthly instalments. It had therefore paid him £748,270, entirely referable to Ventures' obligations under the SPA. 46. The Company's cash diminished swiftly. The £200,176 balance at the end of 2 August dropped to £171,267 by 10 August; after a VAT payment of £74,310 on 11 August the balance was £85,624; having dropped to £41,763 on 13 August, it was up to £91,862 on 23 August; and then diminished to £3,048 by 23 September 2021: a significant deficit to the £500,000 cash baseline in the SPA. 47. In the meantime, Mr Smith, despite having no ongoing service agreement, but having the benefit of what he called a "plan... that I would stick around for 12 months" was surprised when asked to return his car, and then again when asked to leave on 20 August 2021. "I felt it was imperative that I was kept involved. I was the one with all the contacts and was the main person and had been for the last 30 years". By then Mr Jones had left as well. Mr Smith had introduced him in early August "to the main customers and suppliers", but a week later he was off, saying "that A & D was a wonderful company", but "he had decided to quit because he was completely unhappy with what Cotler and Goodwin were doing". That may have been the policy which Mr Cotler told Mr Smith about later that month, of how "he wanted to see how far he could 'push them'", being the suppliers, a policy which Mr Smith had already gleaned from Tracey Nee of accounts.

48. Why the Company failed so rapidly is not directly relevant to this trial. The administrators' proposals cited unexpected queries on the debtors' ledger, the necessity for remedial works, and higher creditors than expected, leading to "significant cashflow problems". Mr Smith blames the departure of Mr Jones, and the failure to replace him; the instructions not to pay suppliers on time, which caused the Company's trade accounts to be "put 'on stop' such that it was unable to purchase materials"; the Aldermore invoice discounting; and his own removal. In his trenchant, if largely secondhand, evidence, as the lead administrator was Ms Dowson, Mr Wigfield said it was clear from his office's investigations, including a "thorough bank analysis", that the Company ran out of money by 11 August, having made usual-scale creditor repayments of £167,000 in the first fortnight of new ownership; and he Page 12 High Court Approved Judgment Re: A & D Joinery Limited (in administration) considered Mr Cotler and Mr Goodwin would have "done well" to run the Company into the ground in so short a time.

49. Ms Dowson first met Mr Cotler and Mr Goodwin on 28 September 2021. They told her “that in their view the Company had insufficient cash and stock to continue trading and that they had concluded that [it] needed to cease trading immediately. My firm was engaged to advise on the options available and, in light of the information which we gathered, we considered that the Company was insolvent and should enter into administration”. There was a delay in that, as during October the Company’s business and assets were marketed, resulting in two offers, one from Mr Smith, neither of which completed. A notice of intention to appoint was filed on 26 October
2021. At administration on 9 November the estimated deficiency to creditors was £454,543, the unsecured creditors being £522,851. The proposals do record a 24 November 2021 agreement with a company connected to Mr Smith, C, D & S Windows Limited, which acquired some stock for £1, with Mr Smith waiving monthly rent on the Company’s premises of £3,000 as well. It was also to assist in debtor collections. These appear not to have been fruitful, and the arrangement was terminated by 8 May 2023. 50. Ventures’ only asset was its shareholding in the Company. It duly failed at the same time, entering creditors’ voluntary liquidation on 2 November 2021, Joanne Hammond and Philip Nunney, also of Begbies Traynor, being appointed liquidators. (According to Companies House, the SPA shares were transferred into another Cotler/ Goodwin company, Holmes MTE Ventures Limited, which was also named as the Company’s PWSC; but both sides have treated this as an error). 51. Each of the payments making up the £748,270 was a transaction between the Company and Mr Smith; and each was referable only to Ventures’ obligations under the SPA, to which the Company was not a party. 52. As above, the Letter of Direction in terms covers only the initial payment of £433,872 already received by Mr Smith from the Company; and describes a loan agreement between the Company and Ventures in respect of that sum, the loan being constituted by the notional transfer from Mr Smith to Ventures of those monies; and its then permitting him to retain them in satisfaction of that part of the Price under the SPA. It Page 13 High Court Approved Judgment Re: A & D Joinery Limited (in administration) is nevertheless Mr Smith’s case that, although he never saw it, and neither have the administrators, there was a loan agreement between the Company and Ventures, treating as a loan to Ventures not just the £433,872 but each payment made and to be made by the Company in discharge of Ventures’ SPA obligations. Hence, as his defence says, “A&D received valuable and equivalent consideration in the form of Ventures’ promise to repay the loan”. Again, Manolete is prepared to accept that was the case, despite the lack of written agreement or even, it may be noted, the obligation being listed by Mr Cotler in the Company’s statement of affairs; an omission which may possibly be explained by the statement only being completed on 19 January 2024, by when it would be obvious that the asset was valueless.
53. Whether the transaction is analysed as being no more than the Company’s successive payments to Mr Smith, or whether it includes Ventures’ reciprocal and immediate obligations to the Company to repay those monies, does not in the end matter: on either basis, in assessing the value of the consideration received by the Company, account would

have to be taken of the Ventures obligation created by and consequent on each payment to Mr Smith. For the same structural reason, to the extent relevant I would think that here the transaction was both the payment and the automatic creation of the immediate reciprocal right of the Company's against Ventures. I would also consider that approach preferable to the pleaded alternative (on which neither Mr Colclough nor Ms Kreamer has spent much time) by which the transaction is that between the Company and Ventures, of which Mr Smith is the beneficiary and so liable under s.241(2): after the initial £433,872, on any view paid before the loan agreement became operative, the notional loans only ever arose on their payment, which was an actual transaction between the Company and Mr Smith; and the substance should be preferred. Again, in the end it would make no difference. 54. Aside from its pertinence to undervalue, the worth of the consideration provided by the Ventures obligation is also a factor in the insolvency tests. 55. The only possible value to the Company from the payments to Mr Smith derives from the Ventures obligation. In making these payments it was not discharging any obligation of its own to Mr Smith, by salary, dividend, or otherwise. Their only purpose was to meet Ventures' periodic liabilities under the SPA. Each payment was purely in cash, and diminished the Company's available cash. Unless Ventures could Page 14 High Court Approved Judgment Re: A & D Joinery Limited (in administration) muster immediate and equivalent cash, the value of its obligation would be speculative. 56. As above, Ventures' only substantial asset was the shares it had acquired in the Company: its own CBILS loan had been paid to the Company, its guarantor, already. As Mr Hayman confirmed, "What is clear is that Ventures had no liquidity. It could not have paid the loan from the Company on demand". Mr Hayman and Mr Haddow agreed that Ventures could only repay if it could borrow further monies; or if it sold its interest at sufficient value; or if the Company declared sufficient dividends. 57. Even leaving aside the reality that no further dividends were declared, Mr Haddow calculated that if the Company's business had continued as before, and it declared dividends as before, then repayment through those would take 19.5 years. Mr Hayman denied that there should be any discount to its attributed value as a result. Even accepting that as correct in accountancy terms, it is plain that in measuring the consideration passing from Ventures there would be very significant discounting for the long time-frame necessary for repayment, and because of the inherent uncertainties over such lengthy period.

58. Mr Hayman confirmed in cross-examination that "as a matter of commercial reality" Ventures could not obtain further borrowing. That must be right. There is no evidence that it sought to, or could, borrow on the security of its shares in the Company; and the time for it to do so was in the event curtailed by its own and the Company's insolvency events. 59. Those factors also point to the impossibility of its selling its interest at a value equivalent to the price paid to Mr Smith. That those shares were charged to Aldermore for its indebtedness, up to £250,000, is a small point, as aside from £14,189 that indebtedness had been met at administration from receipts; and likewise that they were further charged to Mr Smith for the payments to be made under the SPA. Much more problematic was that just as the Company's cash position was deteriorating rapidly, so too was its balance sheet. Its Sage

accounts show net current assets to the end of June 2021, being month 6 of its financial year, at £496,458 and its balance sheet a positive £545,351. Over the next few months that shifted to respective figures of £457,277 and £501,194 for July 2021; £285,338 and £328,147 at Page 15 High Court Approved Judgment Re: A & D Joinery Limited (in administration) the end of August 2021; and £201,851 and £244,660 for September 2021. Mr Hayman's position in his report was that while he offered "no opinion on the value of the Company... the value had just been agreed in a negotiation at arm's length between unconnected parties". Orally, he accepted that with these drops came diminution in the value of the Company; and it follows that Ventures could not have sold its shares for what it had paid. Put baldly, the Company had been valued on bases including that it retained significant cash, when that very cash was then extracted to pay the SPA price. 60. On any analysis, therefore, the Ventures obligation was worth significantly less than the monies the Company paid to Mr Smith.

61. Mr Colclough is also right to observe that the loan agreement carried no interest obligation; and in *Re Ciro Citterio Menswear plc* [2002] EWHC 662, [2002] 1 WLR 2217 at [43] it was held that, on those facts, that constituted an undervalue. Given the £748,270 paid to Mr Smith, such must also apply here. 62. This is also a case which falls within the *Brewin Dolphin* principle. At the latest by 2 November 2021 it was known that Ventures had never paid, and could never pay, anything under its loan agreement with the Company. The consideration it provided through its obligations under that agreement must therefore be valued at zero. 63. Turning to insolvency, I am grateful to both Mr Haddow and Mr Hayman for their unwavering assistance. The 11 April 2025 order under which they were appointed provided that they were to "address the issue of whether A & D... was insolvent at the time of or as a result of the payments"; and by reference to each of s.123(1)(e) and s.123(2), those were the instructions given to Mr Haddow. Those to Mr Hayman were less accurate, asking him to assess whether the Company was cashflow or balance sheet insolvent "[i]mmediately before and after each payment". That proscription of time was unwarrantedly narrow. 64. As to balance sheet insolvency, the experts agreed that it depended on Ventures being a debtor; and that, were the debt recoverable, then even stripping out irrecoverable trade debts, the Company would be balance sheet solvent. Page 16 High Court Approved Judgment Re: A & D Joinery Limited (in administration)
65. Mr Hayman's position was that the Ventures loan would be entered into the balance sheet at its full face value, although he acknowledged that "in the hypothetical market there might be some discount", were a buyer to investigate in any detail its affairs.
66. Were the Ventures loan recoverable in full then, after agreed deductions, the position would be that at the end of business on 27 July 2021 the Company would be balance sheet solvent in a sum of £316,988; of £331,962 at 30 July; and of £210,422 at 27 August. Conversely, if removed, those would be negatives of £269,245; £303,725; and £437,849. The latter appears to me the preferable analysis. As Mr Haddow observes, the Ventures debt was never an asset which could be converted into cash; it was also always severely compromised, for the reasons above; and was in fact one which was irrecoverable. Additional value is not

indicated by its inputting of £100,000 on 30 July, as that derived from its own CBILS borrowing, guaranteed by the Company.

67. Mr Hayman posited that it might be appropriate to take account of goodwill in valuing the Company, being the difference between its 27 July 2021 net assets of £486,687 and the total price of £1,037,687 to be paid under the SPA; so, £550,760. He confirmed that “I don’t say it should be included, as I don’t know”.
68. While the goodwill under the SPA would appear in the Ventures accounts, there are a number of difficulties with attributing it to the Company’s as well. It would be neither an accounting convention, nor in accordance with legal authority; insofar as it was a contingent asset it would be outside s.123(2): see *In re Rococo Developments Ltd* [2016] EWCA Civ 660, [2-17] Ch 1; what Ventures chose to pay would be the product of many factors; whether there should be a figure could not depend on the chance of there being a share sale; that being so, not only would a notional purchaser have to be identified, but also a notional purchase price based on certain notional factors; and if, as here, the relevant company’s net assets were deteriorating, then the perverse effect of its becoming thereby less attractive would be that its goodwill increased: so, as Mr Haddow said, any value would have to shift constantly. For those, and doubtless many other, reasons, the proposition seems unworkable. 69. I am therefore satisfied that the Company was balance sheet insolvent at the date of each transaction. Page 17 High Court Approved Judgment *Re: A & D Joinery Limited* (in administration) 70. It was also cashflow insolvent as a result of the payments under the SPA. The experts agree that “the Company could not afford to make the Payments and continue to trade without borrowing”. There is no evidence that, whether relying on its connected companies or otherwise, Ventures could cause further monies to be loaned to the Company, or that it had access to other monies. 71. That is supported by other evidence. Mr Wigfield said that “I formed a view that the Company was insolvent, or became insolvent as a result of the payments and... I remain of that view”; and, as above, the administrators’ assessment was that the Company ran out of money by 11 August, by when, on 27 and 30 July, £735,687 had been extracted to meet Ventures’ liabilities. Mr Haddow calculates that at the close of business on 30 July the Company’s cash position was a negative £383,342, once adjustments to Mr Hayman’s positive figure of £342,818 were made for irrecoverable trade debtors, wages, the imminent VAT and repayments of PPEC and Training for Growth, as well as £45,000 for Aldermore, £36,388 for corporation tax, and £250,000 for the Company’s CBILS loan. The corporation tax figure would seem questionable, absent more detail; but Mr Hayman agreed on the CBILS repayment obligation, treated as arising because of the use of those monies towards the 30 July payment, rather than for the support of the Company’s business; and so triggering the clause 4.2 right in Funding Circle to demand repayment. The £383,342 negative was actually an improvement on Mr Haddow’s 27 July £497,792; but by 27 August it had enlarged to a negative £610,939. 72. It is also perhaps not overly-crude to note that had the £748,270 paid to Mr Smith been retained in full, then with some margin all the Company’s unsecured creditors as at 9 November 2021, standing at £558,588, could have been paid, however the business had traded in the meantime.

73. Manolete is therefore able to prove insolvency even without regard to the s.240(2) presumption. 74. It follows that Manolete has established that each payment was a transaction at an undervalue. s.238(5); and breach of duty Page 18 High Court Approved Judgment Re: A & D Joinery Limited (in administration) 75. Relief would nevertheless be barred if Mr Smith could establish the elements of s.238(5). As Mr Smith was in control of the Company until the completion meeting, there is considerable overlap in the facts between this and the breach of duty claim. Manolete relies on each of s.171-s.175 Companies Act 2006 to claim that in causing or permitting the two payments of 27 July Mr Smith acted in breach of his duties to the Company, as the payments were for his benefit, and/ or Ventures'; not in the best interests of the Company; and adverse to the interests of its creditors. 76. I accept that in entering the SPA Mr Smith was reliant on the advice of 3volution: he was a one-company man, not a serial entrepreneur, so had no experience of share sales. As above, the evidence is that they and Consilium negotiated the structure; and that Mr Smith was specifically reassured that "it's absolutely fine". His evidence orally was that while he knew Ventures to be the purchaser, it was not until the eleventh hour, being the week before (or, elsewhere, the beginning of July), that he knew the Company was to provide the money; he also knew that Ventures itself had no assets until the acquisition of his shares.
77. Mr Smith added that as at 27 July "I also ensured that all creditors had been paid"; that must mean those due for payment, because at the end of July trade creditors alone were £402,990. He said that "I left A&D with a full order book... the business was booming, was cash rich and left in a good spot for the new owners". Mr Wigfield agreed that profits for the financial year to July 2021 were £135,000, but he had not seen any substantial order book. The cash position has already been recorded above. It certainly had been a cash rich business; able, indeed, to pay £735,687 in the space of four days. 78. There is a letter from 3volution of 27 March 2025, then acting for Mr Smith, which says that "[i]n our client's experience, the cash left with the Company at the point of sale would be enough to last the Company for roughly eight weeks, even if no payments were received by the Company... it ought to have been able to continue trading in the normal way that it had been- ie profitably and with more than sufficient cash". 79. These are generalities which cannot lie with the particular financial positions already set out. Mr Smith has led no explanation as to why the cash did not last for eight Page 19 High Court Approved Judgment Re: A & D Joinery Limited (in administration) weeks, but instead, say the administrators, two; and that especially as he complains that the Company under its new owner was not paying suppliers. There is no evidence that he applied his mind in any way to how the Company would be able to trade when he had left it, though £735,687 of its cash would be gone. It seems never to have occurred to him to question how the Company could pay him this money, when it would take 19 years to pay the same sum by dividends; and there is no evidence that the Company could have met a substantial, or any, part of the purchase price by the declaration of dividends at the end of July 2021, or by a share buyback, each of which would come with their own statutory rules for the protection of creditors. There is no evidence that he paid any regard to the

Company's creditors and how they would be paid, beyond the general sense that Mr Cotler and Mr Goodwin had positive plans for the Company and put in place appropriate management. 80. Given the rapid decline in the Company's financial situation, demonstrative of its precariousness without the cash cushion, this is also a case in which the Sequana duty to have regard to the interests of creditors arose. There is no evidence that Ventures' lack of assets troubled him in any way; and that despite his apparent assumption, until shortly before 27 July, that it would itself be transferring the SPA monies. 81. In short, instead of paying attention to the likely consequences of the stripping out of £735,687, Mr Smith relied on no more than glib assumptions in permitting the Company to pay him the monies he was owed by Ventures. He did not seek any detailed advice either from his solicitors, or accountants. That on this evidence his solicitors did not advise him of the need to consider the transaction in the light of financial forecasts does not absolve him under s.1157, because the risks to the Company should have been obvious, and because the beneficiary of these failures was himself. 82. The breach of duty claim, which is limited to the 27 July payments, therefore succeeds. 83. The s.238(5) defence is directed at the Company's role in the transaction; but here it did not receive any separate advice, whether from an independent member of the board or otherwise. It follows from what has just been said that there were no Page 20 High Court Approved Judgment Re: A & D Joinery Limited (in administration) reasonable grounds to believe that it would be benefitted by paying Ventures' liabilities under the SPA, because the Company never took the advice it ought when entering into what was a transaction beyond the ordinary course of its business. Without that advice it could have no legitimate reason to expend its monies paying out its existing shareholder on behalf of its subsequent shareholder, and so could not act in good faith. It may be assumed that had it taken advice it would not have paid over any monies to meet Ventures' SPA obligations. As that indicates, the transaction was not one directed at the carrying on of its business, but at meeting the private obligations of its shareholders; and that it would permit its business to be continued (as Mr Smith argues; which carries with it the unexplored assumption that he would otherwise have closed it down) is irrelevant. Even were it characterised otherwise, there could be no benefit to it in this transaction which swapped a large amount of cash, necessary for the carrying on of its business, for a promise to pay, without the addition of any interest, from a company which had no liquid assets, and whose only asset was its shares of compromised value in the Company itself. 84. The s.238(5) defence therefore fails. Knowing receipt

85. Manolete puts this claim as alternative cover for the payments after Mr Smith ceased to be a director. It does so on the basis that he was aware when receiving those payments of Mr Cotler and Mr Goodwin's own breaches of duty to the Company. As they are not parties, so have been unable to put their case, I would be enormously reluctant to decide such a claim; and need not do so. Conclusions
86. Manolete succeeds on its transaction at an undervalue claim; and on the partial alternative of breach of duty. 87. The parties are to seek to agree all consequential orders. Page 21

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://caselaw.nationalarchives.gov.uk/ewhc/ch/2026/1046>

CASE PAGE <https://chat.esheria.ai/case-law/england-and-wales/manolete-partners-plc-v-david-smith-2026>

Prepared on 25 October 2026 · Esheria