Neutral Citation Number: [2017] EWHC 3758 (Ch) Case No: CR-2017-005705

IN THE HIGH COURT OF JUSTICE
IN THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (Ch D)

IN THE MATTER OF ASA RESOURCE GROUP PLC (IN ADMINISTRATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

The Rolls Building
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London EC4A 1NL

Monday, 9 October 2017

BEFORE:

THE HON. MR. JUSTICE MARCUS SMITH

BETWEEN:

RICH PRO INVESTMENTS LIMITED **Applicant**

– and –

(1) MARK SKELTON
(2) TREVOR BIRCH
(JOINT ADMINISTRATORS OF ASA RESOURCE GROUP PLC IN ADMINISTRATION
(3) ASA RESOURCE GROUP PLC (IN ADMINISTRATION)

Respondents

MR. LLOYD TAMLYN for the **Applicant**
MS. FELICITY TOUBE, Q.C. and MR. STEPHEN ROBINS for the **Active Respondents**
MR. ROBERT AMEY for the **Subsidiaries**

Hearing date: 9 October 2017

Approved Judgment

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MR. JUSTICE MARCUS SMITH:

1. This is an application made by the Applicant, Rich Pro Investments ("RPI"), under the Insolvency Act 1986 and the Insolvency (England and Wales) Rules 2016.

2. The application is made for relief under Schedule B1, paragraph 74 of the Insolvency Act 1986 and also under the court's inherent jurisdiction as against the administrators, Mr. Skelton and Mr. Birch, of a company, the Third Respondent, ASA Resource Group Plc (in administration) ("ASA").

3. The matter before me is one purely for directions, and I should preface what I say by way of directions with this general comment.

4. In the course of their submissions, in order to support their clients' contentions, all of the parties have made submissions on the detail of the nature of the dispute between RPI, and the Respondents.

5. Although I have before me the evidence in support of RPI's application, I do not have evidence in response from the administrators. It seems to me that it would be entirely wrong for me to be drawn into the serious points of dispute that exist as between the parties' respective positions.

6. Suffice it to say that Mr. Tamlyn, who appeared for RPI, advanced some really quite serious points as against the administrators. That is unsurprising, given that (in order to secure success for his clients) Mr. Tamlyn must, in effect, show that the continuation of the administration would cause unfair harm. That is, intrinsically, a relatively high test.

7. Having noted the seriousness of the allegations made by RPI, it is appropriate that I place on the record that Ms. Toube, Q,C,, who appeared for the administrators, made clear in no uncertain terms that the points advanced by Mr. Tamlyn were refuted and not accepted by her clients and that that would be made clear in the evidence that her clients in due course would adduce in response.

8. I intend to approach the question of directions from a relatively high level for those reasons. This is a case where RPI sought to acquire the shares in ASA. Shortly after that attempt at acquisition, the directors of ASA put the company into administration. This is not necessarily unprecedented but Ms. Toube, who is an extremely experienced practitioner in these areas, indicated that that coincidence between a takeover and an administration was, in her experience, relatively unusual, having occurred in her career only once.

9. The point, it seems to me, is one of obvious interest in resolving quickly. The reason I say this is that without prejudice as to which side is right and which is wrong, there has either been a case where the putting of the company into administration has effectively stymied an attempt to acquire a majority shareholding in the company or, on the other hand, the administration in response to the attempted acquisition of the company has identified matters which need to be investigated dealt with.

10. Whichever side is right, it is important that the matter be resolved quickly and not be allowed to fester over time. It does, therefore, seem to me that it is important to impose a timetable that is swift and fair to all concerned.

11. I therefore consider that this is a case where a timetable can be imposed on the parties which will result in the possibility of a hearing towards the end of November or early December 2017. I am satisfied that if a timetable of that sort can be imposed, it is right to order that a two-day hearing take place on the earliest date possible after the conclusion of that timetable, so that the matter can be dealt with this term rather than next.

12. The reason I consider that this order (and I will treat it as an order for expedition) be made is this. I have in mind the four-stage test of Vos L.J. in *Petter v. EMC Europe Limited* [2015] EWCA Civ. 480. This sets out four factors that need to be taken into account in what is, essentially, a discretionary matter for the court.

13. First, whether there is good reason for expedition. As I have indicated, the subject matter of this application is intrinsically such that it ought to be resolved quickly. Over and above this there is the fact that the continued unresolution of this matter will prejudice the proposed takeover by RPI of ASA Resource.

14. Mr. Tamlyn, for RPI, indicated that, as matters stood, unless extended the time for the takeover lapsed on 3 November 2017 and that no further extension could be expected, except for a few weeks. I accept that submission, but I consider that if a timetable laid down with an anticipated hearing date as envisaged by me, and if – with that timetable in mind - an approach by both RPI and the administrators to the Takeover Panel is made, that an extension can be obtained from the Takeover Panel that is consistent with the timetable that I am about to order. But it does seem to me that it is important because of the involvement of the Takeover Panel that expedition take place.

15. Secondly, returning to the four-stage test in *Petter*, there is the question of whether expedition would interfere with the good administration of justice. I fully appreciate that elevating one case above others in the list inevitably means that cases that would be heard, but for the expedited case, will not be heard. However, in this case, the hearing is not a trial. It is an application as to whether the administration is causing unfair harm. It is a two-day hearing that is anticipated and I do not consider that expedition would, in these circumstances, interfere with the good administration of justice.

16. Thirdly, then, is the question of whether expedition would cause prejudice to the Respondents to the application. That is a matter on which I have been addressed by Ms. Toube, because I have been concerned to ensure the creation of a timetable to the hearing of this application that explicitly does not prejudice the administrators, but enables them to make points that they would wish to make. I am satisfied that – on the timetable envisaged – no such prejudice arises.

17. Fourthly, then, is the question of whether there are any other special factors to take into account. I do not consider, apart from the matters that I have adverted to, that there are any other special factors to take into account.

18. Accordingly, the timetable that I order is that the administrators' evidence be served by 4:00pm on 6 November 2017. As is clear from my exchanges with Ms. Toube, that

permission to put in evidence is without limitation, in the sense that the administrators will put into evidence what they are advised is important in resisting this application. If that includes matters dealing with Zimbabwe law, then so be it. But I am not making any specific direction, one way or the other, as to expert evidence.

19. It seems to me that it is the administrators' duty is to articulate, in a broad brush way, why it is right that the administration should continue and why unfair harm will not be done if the administration continues. That, as I have made clear, is the sort of evidence that one would expect: the point about the continuation of the administration is to be dealt with in a rather more broad brush way than would occur on a trial of factual issues.

20. The evidence in reply from RPI is to be served by 4:00pm on 13 November 2017. That reflects the terms of the draft order so far as the gap between the administrators' evidence and RPI's evidence is concerned. In other words, although the time gap is a short one, it is one that RPI (the party most affected) has itself put forward.

21. Then skeleton arguments, and the other paraphernalia of a hearing, in terms of bundles, shall be exchanged no later than 20 November 2017, with a hearing with a time estimate of two days to take place on first available date after 24 November 2017.

22. That will enable a hearing to take place either very late in November or else very early in December 2017.

23. I appreciate that this is not the date that Mr. Tamlyn sought. It will be necessary for the administrators and for Mr. Tamlyn's clients to approach the Takeover Panel with a view to extending the takeover timetable to beyond 3 November 2017, to a date that is consistent with the timetable I have ordered. It needs to be borne in mind that, even if the hearing takes place in late November or early December, it will be necessary for the court to hand down what may be a reserved judgment. The Takeover Panel should be approached on that basis.

24. That leaves the position of Mr. Amey's clients. Mr. Amey's clients are subsidiaries, but not wholly owned subsidiaries, of ASA. Mr. Amey appears before me today with very short notice of this application. His clients make no application for joinder today, but it is clear that such an application is something that is being contemplated.

25. Because no application is made I will simply make two points.

    i) First, that it does seem to me that it will be necessary for the administrators and Mr. Amey's clients to consider most carefully whether the court will be assisted by representation from largely but not wholly owned subsidiaries of ASA. It does seem to me, without having seen an application from Mr. Amey's clients, that the administrators are perfectly capable of putting forward the position as to why it is in the interests of all concerned, including the subsidiaries, for the administration to continue. But I say that without prejudice to any application that Mr. Amey's clients may make.

    ii) Secondly, should such an application be made and should it be granted, I expect the evidence that is served on the part of Mr. Amey's clients to comply with the timetable that I have laid down already. That is to say, that the evidence of any third party subsidiary shall be served by 6 November and not, as was suggested

to me, a week later. It seems to me that for the reasons articulated by Mr. Tamlyn, it is most undesirable to have two parallel sets of timetables going on.

26. For my part, I do not see why there cannot be sufficient corporation prior to the service of the administrators' evidence between the administrators and any third party subsidiary so as to ensure no duplication of evidence. I appreciate that there is not an absolute identity of interest between the subsidiaries and ASA. If there was an absolute identity of interest, then Mr. Amey's application would have no chance of success. But there is, on any view, substantial identity of interest and it seems to me that there is no reason why sufficient corporation cannot exist so as to ensure that non-duplicative evidence is served, if so advised, and if so ordered, by 6 November 2017.

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