



Neutral Citation Number: [2024] EWHC 749 (Ch)

No: CR-2022-000896

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPOERTY COURT OF ENGLAND AND WALES**  
**INSOLVENCY AND COMPANIES LIST**

**IN THE MATTER OF VE GLOBAL UK LIMITED (IN ADMINISTRATION)**  
**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

Royal Courts of Justice  
Rolls Building  
Fetter Lane  
London EC4A 1NL

Date: 28 March 2024

**Before :**  
**Deputy ICC Judge Baister**

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**Between:**

**TREVOR BINYON AND STEVEN JOHN PARKER**  
**(AS JOINT ADMINSTRATORS OF VE GLOBAL UK LIMITED)**

**Applicants**

**- and -**

**(1) SUZERAIN INVESTMENT HOLDINGS LIMITED**

**Respondents**

**(2) JAMES LUPTON**

**(3) NEW CORANGE LIMITED**

**Ms Katie Longstaff** (instructed by **HCR Legal LLP**) for the **applicants**  
**The respondents** did not appear and were not represented

Hearing date: 15 March 2024  
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**Approved Judgment**

This judgment was handed down on 28 March 2024 by email to the applicant and by submission to the National Archive

Approved Judgment**Deputy ICC Judge Baister:**

1. On 15 March 2024, on the application of the above named applicants, I made a direction declaring that a debenture dated 20 December 2021 as amended by an agreement dated 18 January 2022 granted by VE Global UK Limited was void under s 859H Companies Act 2006. Time did not permit me to give my reasons, which I now do, although they amount to little more than a summary of the main submissions set out in Ms Longstaff's skeleton argument, with which I agree. The application was not opposed, although the respondents have been served, and there has been limited contact with two.
2. In 2021 the company set about raising capital by means of loan notes which were issued in December of that year. On 20 December 2021 the company entered into a guarantee and indemnity agreement with various noteholders, including the first and second respondents, and gave a debenture as security for the investments of the first and second respondents. That debenture was not registered. The third respondent invested in January 2022. It was added as a contracting party to the debenture and guarantee by an amendment agreement of 18 January 2022, but the debenture was not annexed to it. On 1 February 2022 a copy of the amendment agreement was delivered to Companies House but not the debenture. Thereafter, the registrar of companies issued a certificate confirming registration of a charge dated 18 January 2022 created by the company in favour of the respondents.
3. It is common ground that the debenture was not registered. In an email dated 20 March 2023, exhibited to Mr Binyon's witness statement in support of the application, Nick Graham, a representative of the first respondent, attributes this to administrative oversight.
4. The third respondent has indicated through solicitors that it does not oppose the application.
5. The company went into administration on 11 May 2022. The administrators sought advice on the status of the debenture and were advised that it was invalid by reason of non-registration. Two of the three respondents called that advice into question; the other did not respond.
6. The application is made under para 63 Sch B1 Insolvency Act 1986. I agree with Ms Longstaff that the issue in the application is suitable for determination by direction under that provision: it raises a question of law; it is not a matter which requires the simple exercise of the office-holders' commercial judgment.
7. In the normal course of things, the registrar's certificate would be conclusive evidence as to the delivery in time of the documents mentioned in it. The question here is its status in the circumstances of this case and having regard to what the certificate itself certifies. I shall elaborate below.
8. I begin with the relevant provisions of the Companies Act 2006.
9. Section 859A provides:
  - (1) Subject to subsection (6), this section applies where a company creates a charge.

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(2) The registrar must register the charge if, before the end of the period allowed for delivery, the company or any person interested in the charge delivers to the registrar for registration a section 859D statement of particulars.

(3) Where the charge is created or evidenced by an instrument, the registrar is required to register it only if a certified copy of the instrument is delivered to the registrar with the statement of particulars.

(4) “The period allowed for delivery” is 21 days beginning with the day after the date of creation of the charge (see section 859E), unless an order allowing an extended period is made under section 859F(3).

(5) Where an order is made under section 859F(3) a copy of the order must be delivered to the registrar with the statement of particulars.

(6) [...]

(7) [...]

Plainly a debenture is registrable within the meaning of that provision.

10. Section 859D sets out the particulars that must be delivered to the registrar:

(1) A statement of particulars relating to a charge created by a company is a “section 859D statement of particulars” if it contains the following particulars—

(a) the registered name and number of the company;

(b) the date of creation of the charge and (if the charge is one to which section 859C applies) the date of acquisition of the property or undertaking concerned;

(c) where the charge is created or evidenced by an instrument, the particulars listed in subsection (2);

(d) where the charge is not created or evidenced by an instrument, the particulars listed in subsection (3).

(2) The particulars referred to in subsection (1)(c) are—

(a) any of the following—

(i) the name of each of the persons in whose favour the charge has been created or of the security agents or trustees holding the charge for the benefit of one or more persons; or,

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(ii) where there are more than four such persons, security agents or trustees, the names of any four such persons, security agents or trustees listed in the charge instrument, and a statement that there are other such persons, security agents or trustees;

(b) whether the instrument is expressed to contain a floating charge and, if so, whether it is expressed to cover all the property and undertaking of the company;

(c) whether any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge;

(d) whether (and if so, a short description of) any land, ship, aircraft or intellectual property that is registered or required to be registered in the United Kingdom, is subject to a charge (which is not a floating charge) or fixed security included in the instrument;

(e) whether the instrument includes a charge (which is not a floating charge) or fixed security over—

(i) any tangible or corporeal property, or

(ii) any intangible or incorporeal property,

not described in paragraph (d).

(3) The particulars referred to in subsection (1)(d) are—

(a) a statement that there is no instrument creating or evidencing the charge;

(b) the names of each of the persons in whose favour the charge has been created or the names of any security agents or trustees holding the charge for the benefit of one or more persons;

(c) the nature of the charge;

(d) a short description of the property or undertaking charged;

(e) the obligations secured by the charge.

(4) In this section “fixed security” has the meaning given in section 486(1) of the Companies Act 1985.

(5) In this section “intellectual property” includes—

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- (a) any patent, trade mark, registered design, copyright or design right;
  - (b) any licence under or in respect of any such right.
- 11. Section 859H provides that if the requisite documents are not delivered, the charge is void as against an administrator:
  - (1) This section applies if—
    - (a) a company creates a charge to which section 859A or 859B applies, and
    - (b) the documents required by section 859A or (as the case may be) 859B are not delivered to the registrar by the company or another person interested in the charge before the end of the relevant period allowed for delivery.
  - (2) “The relevant period allowed for delivery” is—
    - (a) the period allowed for delivery under the section in question, or
    - (b) if an order under section 859F(3) has been made, the period allowed by the order.
  - (3) Where this section applies, the charge is void (so far as any security on the company's property or undertaking is conferred by it) against—
    - (a) a liquidator of the company,
    - (b) an administrator of the company, and
    - (c) a creditor of the company.
  - (4) Subsection (3) is without prejudice to any contract or obligation for repayment of the money secured by the charge; and when a charge becomes void under this section, the money secured by it immediately becomes payable.
- 12. Section 859I(6) provides:

In the case of registration under section 859A or 859B, the certificate is conclusive evidence that the documents required by the section concerned were delivered to the registrar before the end of the relevant period allowed for delivery.
- 13. Section 859F allows an application to be made to extend the time in which to deliver the prescribed documents. Section 859M makes provision to apply to rectify the register. As Ms Longstaff points out, however, where the company is subject to an

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insolvency process, an order under those provisions will only be made in exceptional circumstances (see, for example, *In re Ashpurton Estates Ltd* [1983] Ch 110).

14. The effect of certification by the registrar and the “conclusive evidence” provision (or its predecessors) have been the subject of significant consideration in the case law, to which Ms Longstaff goes on to refer and the effects of which she summarises in paragraphs 30 ff of her skeleton argument. In circumstances in which the administrators’ application is unopposed I do not propose to go through them all in any detail. Suffice it to say that, unsurprisingly, they fall into two broad categories: cases where the court has declined to go behind the certificate or otherwise come to the assistance of the charge-holder, and cases where the court has declined to assist, generally on the basis that what had been sought to be registered was not enough to create a charge and/or no charge had in fact been registered. As Ms Longstaff notes, the court has either refused to go behind the certificate (save in *Grove v Advantage Healthcare (T10) Ltd* [2000] BCC 985 in which the error was the company number which was held not to be a “particular of the charge,” the validity of which was upheld) or has done so, finding that the statutory requirements had been sufficiently complied with.
  
15. An example of the first kind of case is *Re Yolland Husson & Birkett Ltd; Leicester v Yolland Husson & Birkett Ltd* [1908] 1 Ch 152. In that case a series of debentures had not been registered separately as required, but a certificate had been given and endorsed on each of the instruments. The Court of appeal refused to go behind the certificate. Cozens-Hardy MR (after hearing “arguments of the most technical character which it has been my fate to listen to for many days”) said:
 

“I cannot bring myself to doubt that it would be almost shocking if we held in this case that the certificate of the registrar, which is actually indorsed on each of these debentures, did not justify the debenture-holders in saying that they had, as against the unsecured creditors represented by the liquidator, a perfectly good charge upon the assets of the company.”
  
16. The court in *National Provincial & Union Bank of England v Charnley* [1924] 1 KB 431 followed the approach taken in *Yolland*. The instrument delivered to the registrar was described as a mortgage of leasehold premises but omitted reference to chattels which had also been charged. The registrar entered the description of the instrument in the register in similar terms, omitting to mention the charge over chattels. The court held that the certificate should be understood as certifying registration of all the charges created by the instrument, including that over the chattels, and that it was conclusive evidence of due registration. Ms Longstaff draws on the judgment of Scrutton LJ:

“The result of the legislation as it appears to me is that if the document sent in for registration does contain a charge on particular property, even if the company sending it in has misstated that charge, or the registrar considering it judicially has misunderstood it, when once the certificate has been given the grantees are safe.”

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She emphasises the importance of the document that was actually delivered or sent in. She reinforces the point by reference to the following passage from the judgment of Atkin LJ:

“It appears to me to be the true view that when once such a certificate has been given by the registrar in respect to a particular specified document which in fact creates a mortgage or charge, it is conclusive that the mortgage or charge so created is properly registered, even though the particulars put forward by the person applying for registration are incomplete, and the entry in the register by the registrar is defective.”

She emphasises the facts that the document delivered was specified and that it did create a mortgage or charge. That was also the case in *Re Mechanisations (Eaglescliffe) Ltd* [1966] Ch 20, she says, submitting that Buckley J stressed the need to look at the document creating the charge for its terms and effect, not the register. I am not sure that the point is as powerful as she contends, since the argument Buckley J was considering in the passage to which she refers (pages 34-36) is largely focussed on different points that arose in the case; but I recognise that the learned judge did say that “if there is no registration, or if the registration is in some way so defective that it is to be treated as being no registration at all, then the charge is avoided as a whole,” and later held that,

“In order to discover the terms and effect of the charge (as was pointed out in the passages I have read from the judgments in *National Provincial and Union Bank of England v. Charnley*) one must look at the document creating the charge and not at the register. It is from that document that one will discover what moneys are secured and what is the total amount secured by the charge.”

Be that as it may, the certificate prevailed as conclusive, even where the particulars misstated the sum secured.

17. In *Re Eric Holmes (Property) Ltd (in liquidation)* [1965] Ch 1052 the charge was erroneously dated 23 June 1961 when its date of execution was in fact 5 June 1961. The charge was delivered to the registrar within 21 days of the later date, and a certificate was given stating “a mortgage or a charge dated June 23, 1961” had been granted. Pennycuik J, assisted by passages from Scrutton LJ and Atkin LJ’s judgment in *Charnley*, held that the certificate was nonetheless conclusive evidence of registration.
18. The position in *In re C L Nye Ltd* [1971] Ch 442 was similar to that in *Eric Holmes*, in that the charge misstated the date of its creation, and particulars were delivered with the wrong date. Liquidators sought to avoid the charge. Applying *Charnley*, the Court of Appeal held that the certificate was conclusive evidence that the requirements of the Companies Act 1984 had been complied with.
19. In *R v Registrar of Companies, ex parte Esal (Commodities) Ltd* [1986] 1 QB 1114 the registrar’s decision to issue a certificate was quashed in judicial review proceedings. The charge had been registered on late delivery of the copy instruments of charge. The registrar appealed. The Court of Appeal found that, whilst the registrar had erred in deciding that the statutory requirements had been complied with, the certification

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provision precluded the admission of evidence in the judicial review proceedings challenging the correctness of the decision once it had been incorporated into a certificate. Slade LJ stressed:

“[I]t must follow that, even if the registrar erroneously registers a charge which should not have been registered and gives a consequent section 98 certificate, such error may be incapable of correction. However, lest it be thought that this position may give rise to undue hardship or injustice, I would draw attention to two points. The first is the limited nature of the effect of a registration and a consequent section 98 certificate. It does not operate to confer validity on a charge which is invalid for reasons other than lack of registration.

[...]

“Two special cases may arise on which I wish to express no concluded opinion in this present judgment, because it is not necessary to do so. The first is the hypothetical case where a purported certificate given by the registrar under section 98 discloses an error on the face of it. It may well be that even the protection afforded by section 98(2) would not operate in that situation. The second special situation might arise where the certificate had been obtained by fraud.”

20. In *In re Bitumina Industries Ltd (in administration)* [2022] EWHC 2578 (Ch) the certificate was held to cover the charge in issue as it was not “entirely different” from the “third deed” to which the particulars referred.
21. Ms Longstaff’s central submission, the force of which I accept, is set out in paragraph 53 of her skeleton argument. The certificate in this case, she points out, refers to a charge dated 18 January 2021. But that is the date of the amendment agreement. The debenture was dated 20 December 2021. The amendment agreement does not itself create a charge: it extends the terms of the debenture. In the circumstances, the certificate purports to register a charge that does not exist. That is sufficient to distinguish this case from those where the court has gone the other way. It cannot be said in this case that the amendment agreement was “not entirely different” from the debenture (words used in *In re Bitumina Industries Ltd* in which Mr Simon Gleeson, sitting as a High Court Judge, noted that in fact the description of the charge filed was “an exact description of the charge which the chargor had granted, except for its legal form”).
22. For the foregoing reasons I am satisfied that in this case the debenture is void as against the administrators under s 859H Companies Act 2006.