Neutral Citation Number: [2010] IEHC 163

THE HIGH COURT

2010 55 COS

IN THE MATTER OF LARKIN PARTNERSHIP LIMITED (IN VOLUNTARY LIQUIDATION)

AND

IN THE MATTER OF THE COMPANIES ACTS 1963 – 2009

AND

IN THE MATTER OF THE PETITION OF FELDIMONT LIMITED

Judgment of Miss Justice Laffoy delivered on the 22nd day of March, 2010.

Proceedings

1. These proceedings were initiated by a petition presented on 27th January, 2007 by Feldimont Limited (the petitioner) to have Larkin Partnership Limited (the company), which was already in voluntary liquidation, wound up by the Court and an official liquidator appointed. In the alternative, the petitioner seeks that a hearing be held into the sale of the company's assets and undertaking to Leo Burnett Associates Limited (Leo Burnett) and to consider evidence of an apparent substantial disappearance of property of the company that is not adequately accounted for and that John Mullany (the liquidator) be directed to investigate and prepare a report setting out any matters which he considers will assist the Court in considering the evidence concerned on that hearing. At the hearing, a third possibility was suggested – that the Court annul the members winding up resolution, so that the process may be re-started.

The essential facts

2. The relationship between the petitioner and the company is that of landlord and tenant and creditor and debtor. By a lease dated 5th March, 2005 (the lease) the petitioner demised the ground and first floor of office premises at 23, Fitzwilliam Place in the city of Dublin to the company for the term of seven years from 15th November, 2004 at an initial rent of €96,000 per annum, which was subject to review. While the lease provided that the annual rent was payable quarterly in advance on quarterly gale days (1st January, 1st April, 1st July and 1st October in each year), in fact the rent was paid and accepted monthly in advance from the rent commencement date (15th November, 2004) up to and including 15th November, 2009. Counsel for the petitioner pointed to clause 7.6 of the lease, which provides that the company's covenants *qua* tenant should remain in full force both at law and in equity notwithstanding that the petitioner landlord may have appeared to have waived or released temporarily any such covenant. In any event, it is common case that, subject to one qualification, in accordance with the practice which had been in place during the currency of the lease, the company had paid the rent due under the lease up to 14th December, 2009, and that the next instalment would have been due on 15th December, 2009 in accordance with that practice. The qualification is that, on the increase of the VAT rate from 21% to 21.5% in 2009, the VAT element of the monthly rent increased by €40 per month, so that as of 11th December, 2009 the sum of €280 was due by the company to the petitioner in respect of VAT under the lease.

3. The significance of 11th December, 2009 is that it was on that day that a general meeting of the members of the company was convened and a creditors' meeting was convened with a view to having the company wound up voluntarily. The creditors' meeting had been advertised in the Irish Examiner and in The Star on 27th November, 2009. However, the principals of the petitioner did not become aware of the advertisement and the petitioner was not given notice of the creditors' meeting in accordance with Order 74, rule 76 of the Rules of the Superior Courts 1986 (the Rules). While it is now accepted by the company and the liquidator that the petitioner was a creditor in the sum of €280 as of 11th December, 2009, it has been averred by Mr. Martin Larkin, who was a director of the company and the chairman of the creditors' meeting, that he was not aware of that liability when the statement of affairs presented at the creditors' meeting was prepared and notice of the creditors' meeting was sent to creditors.

4. At the general meeting of the members of the company held on 11th December, 2009 an ordinary resolution was passed that "the company cannot by reason of its liabilities continue its business" and that it be wound up voluntarily and that the liquidator be appointed liquidator for the purposes of the winding up. The petitioner has questioned the validity of that resolution as a step in the winding up process on technical grounds. However, the resolution represented the decision of the holders of 99% of the issued share capital of the company and was based on their judgment that the company was insolvent. Therefore, in my view, it serves no useful purpose to pursue that point and I cannot see that it is of any particular advantage to the petitioner to do so. For that reason, I do not consider it necessary to address that point further or to address other procedural issues raised by the petitioner in relation to the validity of the creditors' meeting or the failure to serve notice of the creditors' meeting on the petitioner. I propose concentrating on the petitioner's primary concern, which is outlined later.

5. The estimated statement of affairs showed a deficit of liabilities over assets in the sum of €4,871.90. One is entitled to speculate how that sum measures against the cost of getting to the stage of having a liquidator appointed (placing advertisements in two national daily newspapers, notifying creditors, hiring a room in the Harcourt Hotel, retaining an accountant), not to mention costs of the liquidation. As regards the detail in the statement of affairs, the debtors aggregated €31,876.50, of which €13,064 related to a redundancy rebate and a VAT refund. The creditors, eleven in number, aggregated €36,748.40. As averred to by Mr. Larkin, six creditors, representing a value of €30,240.15 between them, returned proxy forms appointing him, as chairman of the creditors' meeting, to act as their proxy. Leo Burnett, a creditor in the sum of €4,902.13, was not among the six. A note at the end of the statement of affairs disclosed that there was "an unexpired term of twenty three months on a seven year office lease which has an annual rent of €96,000".

6. The liquidator was appointed liquidator at the members' meeting, which he attended. No alternative liquidator was proposed by the creditors at the creditors' meeting. Accordingly, the nominee of the members became liquidator.

7. The principals of the petitioner became aware that the company had been wound up on 23rd December, 2009, when inquiries were made of a director of the company as to why rent and other liabilities then owing to the petitioner had not been discharged. Correspondence opened between the petitioner's solicitors and the solicitors acting for the liquidator in these proceedings on 5th January, 2010.

8. By letter dated 7th January, 2010 to the petitioner, the solicitors for the liquidator gave notice that, on the expiration of seven days from the date of the letter, it was the intention of the liquidator to seek the leave of the Court to disclaim the lease. On 14th January, 2010 an originating notice of motion was issued, which was returnable for 1st February, 2010, in which the liquidator sought leave to disclaim the remaining leasehold interest under the lease. That application (Record No. 2010/33 COS) is pending before this Court.

The course of these proceedings

9. As I have stated at the outset, the petition issued on 27th January, 2010. It was returnable for 15th February, 2010. It was grounded on a verifying affidavit of Eoghan O'Meara, a director of the petitioner, which was sworn on 28th January, 2010. The petition was duly advertised in two daily newspapers on 4th February, 2010 and in Irish Oifigiúil on 5th February, 2010.

10. The response to the petition was an affidavit sworn by the liquidator on 9th February, 2010. Unusually, and, in my view, inappropriately, the liquidator purported in that affidavit to answer the petitioner's petition on the merits. Moreover, it would appear that the firm of solicitors, who filed that affidavit on behalf of the liquidator, had acted for the company in preparation for the voluntary liquidation and placed the newspaper advertisements. The petitioner has raised an issue as to an apparent conflict of interest arising, it has been asserted, from the fact that the same firm of solicitors was acting for the company before the liquidation as is now acting for the liquidator in the course of the liquidation.

11. The liquidator's affidavit was responded to by Mr. O'Meara in two affidavits sworn respectively on 12th February, 2010 and 19th February, 2010.

12. The matter was adjourned from time to time in the Court list. On at least one occasion, the Court queried the propriety of the liquidator responding on the merits to the petition to wind up the company which was addressed to the company.

13. On 8th March, 2010 an affidavit in response to the petition was sworn by Mr. Larkin and filed on his behalf by a firm of solicitors other than the firm acting for the liquidator.

14. As I understand it, the legal representation to answer the petition at the hearing of the petition on 15th March, 2010 was on behalf of the company, not the liquidator. However, there was a further affidavit sworn by the liquidator on the 12th March, 2010 before the Court, to which I will refer later. None of the creditors appeared on the hearing of the petition.

The petitioner's primary concern

15. Patently, the petitioner's interest is to secure payment of the monies due to it and to preserve the lease or, alternatively, to be properly recompensed in accordance with law, if the lease is terminated before its normal expiration by effluxion of time. From a cursory glance at the statement of affairs presented at the creditors' meeting, it is clear that the creditor of the company who will be most adversely affected by the voluntary winding up of the company will be the petitioner, in the sense that it will incur the greatest monetary loss. In setting out the petitioner's primary concern and the response to it by the liquidator and Mr. Larkin, I propose to use the terminology of the parties so as to avoid putting any gloss on a matter which may require to be litigated later.

16. The primary concern expressed by the petitioner in the petition, and the basis of his contention that a winding up under the supervision of the Court is necessary, was articulated as follows:

> "17. A source of very serious concern to the Petitioner is that, in or about June 2009, the Company issued a press release to the effect that the assets and undertaking of the Company had been purchased by Leo Burnett. This was reported, *inter alios*, by the Irish Times on 5th June, 2009.
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> 18. The said report and press release referred to an 'earn-out' payment of between €1,000,000 and €3,000,000 for Mr. Martin Larkin, depending on the performance of 'the business' over the three years subsequent to the acquisition. Furthermore, Mr. Larkin has since been appointed Chairman of Leo Burnett.
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> 19. The report makes no mention of how the acquisition was structured. However the petitioner believes that Leo Burnett acquired the assets and undertaking of the Company because Leo Burnett does not appear to have acquired the shares of the Company; and the lack of Company assets shown in the Statement of Affairs reflects this.
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> 20. It would seem therefore that any payment due on foot of the acquisition should have been made, in the first instance, to the Company and not to Mr. Larkin."

In the affidavit verifying the petition, Mr. O'Meara exhibited the article from the Irish Times of 5th June, 2009 and a press release which was, but is no longer, on the website of Leo Burnett.

17. The liquidator responded to that concern in paragraph 11 of his affidavit sworn on 9th February, 2010, in which he invoked "duties of confidentiality" which restricted his ability to put certain matters relating to the transaction between the company, Mr. Larkin and Leo Burnett into the public domain. However, he averred that he was carrying out investigations in relation to the petitioner's concerns. He continued as follows:

> "It is clear to me from such information gleaned thusfar that no consideration passed to the Company in relation to the Company's agreement with Leo Burnett that appears to have been effected in June 2009 and that transaction was entered into at a time when there were serious concerns about the future viability of the Company. I understand that Martin Larkin, director of the Company in addition to various other staff members of the Company transferred their employment to Leo Burnett as part of this transaction and a complex remuneration arrangement was made between Leo

> Burnett and Martin Larkin with regard to his transfer of employment to Leo Burnett. I am fully aware as to the Petitioner's concerns in relation to this transaction and I have repeatedly confirmed to the Petitioner that I intend to fully interrogate all relevant persons associated with this transaction and to carry out a review of all relevant documents and to report upon such matters in accordance with my duties and responsibilities as liquidator of the Company."

In his final affidavit sworn on 12th March, 2010, the liquidator averred that, in furtherance of his duties as liquidator of the company, he had appointed John Eddison of Upton Ryan, Chartered Accountants and Financial Advisers, to conduct a review of the transaction. He exhibited a letter of 11th March, 2010 from Mr. Eddison in which he confirmed that he had accepted instructions from the liquidator "to conduct a review of a transfer of goodwill and/or business by [the company] and to provide [the liquidator] with a report and opinion with respect of the same". In the exhibited letter, Mr. Eddison stated that his instructions were "subject to formal engagement in the matter".

18. Mr. Larkin set out his account of the transaction with Leo Burnett in his affidavit sworn on 8th March, 2010. Mr. Larkin, in his personal capacity, owns 85% of the issued share capital of the company and he owns another 14% through Larkin Communication Consultants Limited. He was a director and the secretary of the company at the time the winding up resolution was passed.

19. Mr. Larkin has averred that the company, which was incorporated on 1st October, 1993 and began to trade in January 1994 in the provision of a range of marketing communication services, including sales promotions, public relations, media management and advertising, was successful and profitable up to 2008 and had accumulated profits at its year end on 31st December, 2007 of €274,634. However, there was a significant downturn in the advertising market generally in 2008. At the end of 2008 the directors anticipated that 2009 would be an extremely difficult year and were concerned about the company's ability to continue to trade. It sought to reduce its overheads, including attempting to re-negotiate the terms of the lease with the petitioner, which did not prove successful. Due to a variety of factors, the directors concluded that the company should cease to trade, which it effectively did in or around June 2009. Mr. Larkin has averred that he was "effectively out of work". He approached the Managing Director of Leo Burnett looking for a position and subsequently he became and remains "a consultant to Leo Burnett". He has not specifically refuted the statement in the press release on the website of Leo Burnett that he was joining the company, presumably meaning Leo Burnett, as Chairman.

20. Mr. Larkin has rejected Mr. O'Meara's allegation that the assets of the company have in some way been improperly diverted to Leo Burnett by him. He has averred that there were no assets of the company which could have been disposed of, because the business of the company revolved entirely around personal relationships that he had established with clients over the years. As such there was nothing of value to be disposed of. As regards the article in the Irish Times and the extract from the Leo Burnett website, while accepting that those matters might have given rise to suspicions on the part of the principals of the petitioner, he averred that "both came about as a result of my desire to attempt to put a positive spin on the closure of the Company". He has averred that the substance of both documents is inaccurate in suggesting that he has profited or will profit from the sale of the assets of the company. He has expressed his willingness to co-operate fully with the liquidator of the company, whom he expects to scrutinise the matter.

Implications of its primary concern for the petitioner

21. It was submitted by counsel for the petitioner that, as of 26th November, 2009, being the date on which notice of the creditors' meeting was given to the creditors, the petitioner was a creditor of the company in the amount of €280 for a then present debt and in the amount of €184,000 for a future debt, representing twenty three months rent under the lease (exclusive of VAT). It was also submitted that, if the petitioner had been given notice of the creditors' meeting and had attended it, on the basis of the provisions of s. 267(3) of the Act of 1963, he would have been in a position to outvote all of the other creditors of the company if he proposed a person as liquidator and he would have been in a position to procure the appointment of a liquidator of his choice. Counsel for the company refuted that argument, submitting that, by virtue of Order 74, rule 68 of the Rules of the Superior Courts, the petitioner would be limited to proving in respect of a debt of €280. Rule 68 provides that a creditor shall not vote in respect of "any unliquidated or contingent debt or any debt the value of which is not ascertained". Relying on the decision of this Court (McCracken J.) in *Re Naiad Limited* (Unreported, 13th February, 1995), counsel for the company submitted that, as of 11th December, 2009, the petitioner would not have been entitled to vote in respect of future rent due under the lease. In my view, that is correct. However, I consider that, in order to get to the nub of the petitioner's complaint it is necessary to assess the overall impact of the winding up of the company on the petitioner.

22. As is clear from the resolution of the members passed at the general meeting on 11th December, 2009, the members of the company regarded it as being insolvent and unable to pay its debts as of 11th December, 2009. Therefore, one can assume that the winding up of the company was an inevitability. On the basis that the liquidator is seeking to disclaim the lease under s. 290 of the Act of 1963, for present purposes it must be assumed, and I understand it to be common case, that the leasehold interest constitutes onerous property. Therefore, the totality of the recompense the petitioner could have anticipated receiving in respect of the leasehold interest in the event of the winding up of the company falls into two categories:

> (a) any rent accruing in respect of the period prior to disclaimer during which the liquidator would retain the leasehold interest for the benefit of the creditors, which would rank in priority as a cost or expense of the winding up (*Re Ranks (Ireland) Ltd.* [1988] I.L.R.M. 751; and *Tempany v. Royal Liver Trustees Ltd.* [1984] I.L.R.M. 273); and
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> (b) the damages to which the petitioner would be entitled by virtue of sub-section (9) of s. 290, for which the petitioner would be entitled to prove in the winding up, the measure of the damages being the difference between the rent which would have been paid by the company under the lease and the rent which the petitioner would be likely to obtain for the unexpired residue of the term of the lease (*Re Ranks (Ireland) Ltd.* [1988] I.L.R.M. 751).

Given that the liquidator's application under s. 290 is pending and the parties are in dispute in relation to both categories, the Court must be careful not to express any view which might be seen as a predetermination of the issues which arise on that application. However, as counsel for the petitioner submitted, the disclaimed value of the lease under s. 290(9), at its absolute minimum, on the basis of the evidence put before the Court on the application under s. 290, is €100,000, the figure put before the Court by the liquidator, which is lower than the petitioner's figure.

23. The position adopted on behalf of the petitioner is that its primary concern gives rise to the apprehension that the provisions of the Companies Acts and company law generally may have been breached by the company and its directors. Particular reference was made to s. 286 of the Act of 1963 and ss. 29, 31 and 139 of the Companies Act 1990 and the principle established in *Re Frederick*

Inns [1994] 1 I.L.R.M. 387, which I understand to mean that the actions of the directors of the company may have been *ultra vires* their powers. It was also submitted that Mr. Larkin appears to be in breach of his fiduciary duties to the company in allowing his interests to conflict with those of the company and diverting business opportunities away from the company. The Court was invited to infer that the period of very slightly more than six months which was allowed to lapse between the announcement of the sale of the company's business and the commencement of the winding up was calculated to obviate the effects of s. 286 of the Act of 1963.

24. What is clear beyond question is that the petitioner is the creditor for whom the winding up of the company has the most serious impact. Looking at the figures in the statement of affairs, I think it is reasonable to infer that the reason the members of the company decided to wind it up was because of the company's liability to the lessor under the lease. If that liability did not exist, it is reasonable to infer that the company could have arranged matters so that its assets would have met its liabilities. Therefore, I consider it reasonable to conclude that the main, and probably the sole, target of the winding up was the liability of the company under the lease. My earlier observations in relation to comparing the deficit shown on the statement of affairs to the costs of getting to the stage where the company was wound up supports that conclusion.

Submissions on the law

25. The Court had the benefit of comprehensive written submissions from counsel for the petitioner and counsel for the company, supplemented by oral submissions.

26. Counsel for the petitioner analysed two recent decisions of the High Court: *Re Hayes Homes Ltd.* [2004] IEHC 124 and *Re Balbradagh Developments Ltd.* [2009] 1 I.R. 597 and abstracted the factors which were considered in the judgments in determining whether a winding up by the Court should be substituted for a creditors' voluntary winding up and made submissions as to how those factors were relevant to the circumstances of these proceedings. The factors referred to were:

> (a) the wishes of the majority of the company's creditors;
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> (b) whether the petitioner has a "justifiable sense of grievance";
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> (c) the cost and time involved in a compulsory liquidation as compared with a voluntary liquidation, having regard to the assets and liabilities of the company;
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> (d) the complexity or conflict which may be involved in the investigation of alleged wrongdoing of the directors of the company;
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> (e) the entitlement of the petitioner to apply to the Court to determine any question arising in the winding up;
>
> (f) the integrity, independence and capacity of the liquidator *in situ*;
>
> (g) the supervisory role of the office of the Director of Corporate Enforcement; and
>
> (h) the expedition of the petitioner in presenting the petition.

27. In submitting that the "justifiable sense of grievance" factor is a factor to be considered in these proceedings, counsel for the petitioner submitted that it is important to consider the nature of the wrongdoing alleged to give rise to the justifiable sense of grievance, quoting the following passage from the judgment of O'Neill J. in *Re Hayes Homes*:

> "In my view this court should be disposed to intervene if the circumstances deposed to on affidavit show that the assets of the company, such as the goodwill of its business, have gone to an associated company without any payment and the liquidation is in the hands of the nominee of the person or persons who had control over the company and the connected or associated companies, and where the nominee of the majority of the creditors who stand to lose substantial monies has been rejected."

It was also submitted that, in formulating that test, O'Neill J. had not imposed a requirement that a standard of proof be met in relation to alleged wrongdoing. Rather his decision was founded on an inference that –

> "… the petitioner would undoubtedly have a strong sense of suspicion and grievance arising from the fact that the petitioner is the only party to whom any substantial debt was owed by the company and also the fact that the only potentially realisable asset of the company i.e. its goodwill, would appear to have [been] transferred to an associated company without any recompense. It may of course be the case having regard to the trading of the company which had resulted in a substantial loss, and the market conditions prevailing in the market in which it is operated that the goodwill might have had little realisable value. That is beside the point, which is, that from the point of view of the petition this aspect of the affairs of the company create justifiable suspicion and would require rigorous investigation".

28. Counsel for the petitioner submitted that a winding up order should be made on the petition of the petitioner because:

> (i) the petitioner represents a majority of the creditors;
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> (ii) it has a justifiable sense of grievance in relation to the company's disposal of its assets and undertaking without payment to an associated company shortly before the liquidation commenced;
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> (iii) the lack of vigour of the current liquidator (who was appointed by the company) in investigating the matter; and
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> (vi) an apparent conflict of interest on the part of the liquidator's legal advisers.

29. On the other hand, counsel for the company argued that voluntary liquidation is the appropriate process in this case for the following reasons:

> (a) the company was not a large operation and it operated from a single site and carried on a reasonably straightforward business, and, even taking into account the petitioner's interest *qua* lessor, which is acknowledged, the creditors are limited in number and value;
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> (b) no issue has been identified which is of such magnitude or complexity as to warrant the additional time and

expenditure involved in a Court winding up;

(c) the time and expenditure involved in a Court winding up would only inure to the detriment of the general body of creditors and the petitioner, in that the costs associated with that process would rank ahead of all claims in the liquidation; and

(d) the petitioner has shown no reason why there would be more applications for directions in this liquidation than in any other voluntary liquidation, and no such reason exists.

Conclusion

30. I have no doubt that the petitioner is wholly justified in its main concern and has a justifiable sense of grievance as to the manner in which it was treated by the company both prior to and following the resolution to wind up, having regard to the view I have expressed earlier as to what I infer to be the objective of the company in going the creditors' voluntary liquidation route. The petitioner is justified in its concern that there was no intangible asset value in the company when the creditors' voluntary winding up process was initiated by the directors and members of the company and in raising questions as to whether the arrangements entered into with Leo Burnett in June 2009 involved fraudulent preference or the improper transfer of assets in breach of the Companies Acts or the principles of common law. The petitioner is correct in its contention that the questions raised need to be rigorously investigated.

31. Even though, at the time of the creditors' meeting, the company's debt to the petitioner was only in the region of €280, as the earlier analysis of the facts illustrates, the petitioner is the creditor on whom the winding up will have the greatest impact, even if the Court were to find in due course that the liquidator's assessment of the damages due under s. 290(9) (€100,000) is to be preferred to the petitioner's assessment (€130,687.50) and the Court were to take a more limited view of the quantum of rent due by the liquidator which is recoverable as a cost of the winding up than has been advanced on behalf of the petitioner on the s. 290 application.

32. I am also of the view, on the evidence before the Court, that the liquidator demonstrated a lack of vigour in investigating the circumstances in which the company ceased trading in June 2009 and the personnel of the company, including Mr. Larkin, moved to Leo Burnett and to the premises of Leo Burnett. It is true that very much at the eleventh hour the liquidator has taken steps "to address the petitioner's concerns" in relation to the transaction with Leo Burnett in June 2009, but I am at a loss to understand why the liquidator, who describes himself as an insolvency practitioner and is a member of a firm of chartered accountants and registered auditors, now finds it necessary to outsource the investigation to another accountant, thus, presumably, inflicting additional costs and expenses on the creditors of the company. In making that observation, I am not overlooking the fact that the liquidator may have considered that step as necessary to appease the petitioner.

33. I find it difficult to form a view as to whether there is a conflict of interest on the part of the liquidator's legal advisers, because it is not clear to what extent they were involved in advising the company before the creditors' voluntary winding up process was initiated.

34. However, I am of the view that the issues which arise can be adequately addressed in the creditors' voluntary liquidation process, without the necessity of having a compulsory winding up by the Court. In my view, there are only two issues which give rise to the necessity for the involvement of the Court, namely:

(a) the application to disclaim the lease under s. 290 of the Act of 1963, which is ready for hearing; and

(b) such proceedings as, following investigation of the circumstances in which the company ceased to trade and of the transaction with Leo Burnett in June 2009, it is considered should be initiated to procure redress for any wrongdoing on the part of the company or its directors or members which the investigation discloses or is believed to disclose.

35. While I do not propose to make an order winding up the company, I propose to treat the alternative relief sought by the petitioner as an application for directions under s. 280 of the Act of 1963 and to deal with it as such. While Order 74, rule 138 of the Rules, as amended, requires an application under s. 280 to be brought by originating notice of motion, I am satisfied that it is appropriate to deal with it on the petition, which was advertised. Therefore, I am deeming the other creditors of the company as being on notice of the contents of the petition, including the alternative relief claimed in it. However, I can see no point in annulling the winding up resolution and re-starting the process.

36. As will be clear from what I have stated earlier, I have a concern about the escalation of costs on account of the liquidator outsourcing the investigation into the events and transaction of June 2009 to which the petitioner's core complaint relates. However, my concern runs deeper than that, because of the manner in which the liquidator dealt with the petitioner from the outset and participated in responding to the petitioner's complaints and answering the petition on the merits. While the avowed position of the petitioner in its written submissions is that it does not seek to impugn the integrity of the liquidator, the Court was referred to its jurisdiction under s. 277 of the Act of 1963, by virtue of which the Court may remove a liquidator for "cause shown". Counsel for the petitioner pointed to authorities to the effect that "cause shown" does not mean misconduct, so that a liquidator may be removed even without a hint of moral turpitude on his part. Notwithstanding those submissions, the position is that the petitioner has not formally sought the removal of the liquidator, as opposed to seeking the annulment of the process by which he was appointed. Nonetheless, the Court's concerns have been set out and the liquidator must be given an opportunity to respond to them.

37. There is also the matter of the alleged conflict of interest on the part of the solicitors acting for the liquidator which also requires to be satisfactorily resolved either by evidence being adduced that no such conflict exists or, alternatively, by the solicitors stepping aside.

38. Therefore, I propose adjourning the petition until 26th March, 2010 to enable the parties to address those two issues.