

Power to deal with charged property, etc.

530. (1) Where, on an application by the examiner, the court is satisfied that—

(a) the disposal (with or without other assets) of any property of the company concerned which is subject to a security which, as created, was a floating charge, or

(b) the exercise by the examiner of his or her powers in relation to such property,

would be likely to facilitate the survival of the whole or any part of the company as a going concern, the court may by order authorise the examiner to dispose of the property, or exercise his or her powers in relation to it, as the case may be, as if it were not subject to the security.

(2) Where, on an application by the examiner, the court is satisfied that the disposal (with or without other assets) of—

(a) any property of the company concerned subject to a security other than a security to which subsection (1) applies, or

(b) any goods in the possession of the company concerned under a hire-purchase agreement,

would be likely to facilitate the survival of the whole or any part of the company as a going concern, the court may by order authorise the examiner to dispose of the property as if it were not subject to the security or to dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the company.

(3) Where property is disposed of under subsection (1), the holder of the security shall have the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he or she would have had in respect of the property subject to the security.

(4) An order under subsection (2) shall include a condition that—

(a) the net proceeds of the disposal of the property or goods concerned; and

(b) where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property or goods concerned in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.

(5) Where a condition imposed in pursuance of subsection (4) relates to 2 or more securities, that condition operates to require the net proceeds of the disposal and, where paragraph (b) of that subsection

applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.

(6) A certified copy of an order under subsection (1) or (2) in relation to a security shall, within 7 days after the date of the making of the order, be delivered by the examiner to the Registrar.

(7) If the examiner, without reasonable excuse, fails to comply with subsection (6), he or she shall be guilty of a category 4 offence.

(8) References in this section to a hire-purchase agreement include references to—

(a) a conditional sale agreement;

(b) a retention of title agreement; and

(c) an agreement for the bailment of goods which is capable of subsisting for more than 3 months.