Neutral Citation Number [2024] EWHC 3287 (Ch)

CR 2023 002353

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (CHD)
IN THE MATTER OF THE LONDON RESORT COMPANY HOLDINGS LIMITED
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Royal Courts of Justice
7 The Rolls Building
Fetter Lane
London
EC4A 1NL
Date: 19/12/2024

Before :

ICC JUDGE BARBER

- -

Between :

PARAMOUNT LICENSING INC.

Applicant

- and –

(1) WILLIAM ANTHONY BATTY
(2) THE LONDON RESORT COMPANY HOLDINGS LIMITED

Respondents

- -

Ms Lara Kuehl (instructed by **Clintons)** appeared for the **Applicant**
Mr Simon Hunter (instructed under the Licensed Access Scheme) appeared for the **First Respondent**
Mr Ian Mayes KC (instructed by Judge Sykes Frixou) appeared for the **Second Respondent** initially but withdrew

Hearing date: 10 October 2024

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Approved Judgment

This judgment was handed down remotely by email and MS Teams. It will also be sent to The National Archives for publication. The date and time for hand-down is 9.00 a.m. on 19 December 2024.

ICC Judge Barber

1. At a hearing on 10 October 2024, I granted an order (i) declaring that the Second Respondent ('the Company') was in irremediable breach of the terms of the CVA which it had entered with its creditors in April 2023 (ii) directing the First Respondent as Supervisor to issue a certificate of termination by midday 11 October 2024 and (iii) dismissing the Company's cross-application for a 'stay' of the CVA and attendant relief, with written reasons to follow. This judgment sets out my reasons for that order.

Background

2. The Applicant is a creditor of the Company. It is owed an undisputed debt of £13.5 million (including interest) pursuant to an arbitration award and related High Court judgment to enforce the same.

3. The Company was incorporated on 6 May 2011 to develop and operate a 'Disneyland-style' theme park in Kent, to be known as 'the London Resort'. It is controlled by Mr Abdullah Al-Humaidi ('Mr Al-Humaidi'), the majority shareholder in the Company's ultimate parent, Kuwait European Holdings KSC ('KEH Kuwait'). Mr Al-Humaidi was a registered director of the Company but ceased to be such when a bankruptcy order was made against him on 6 November 2023. Notwithstanding stepping down as a registered director, Mr Al-Humaidi has continued to play a very active role in the Company, a point to which I shall return.

4. The Applicant maintains that Mr Al-Humaidi has been convicted of fraud on multiple occasions in Kuwait. Mr Al-Humaidi (at paragraph 48 of his witness statement) denies having faced multiple fraud charges but does accept that one fraud charge, involving restriction entries at HM Land Registry, was brought against him in Kuwait in 2021, which he states is now being contested by his lawyers in Kuwait. In the context of this application it is not for the court to determine who is right on this issue. For present purposes this court will proceed on the basis that Mr Al-Humaidi accepts that one fraud charge was brought against him in Kuwait and that he is now taking steps to contest the same.

5. The current de jure directors of the Company are Mr Robert MacNaughton, appointed on 27 February 2023, shortly before the Company entered into CVA, and Mr Al-Humaidi's brother, Dherar Al-Humaidi ('Dherar').

6. The cost of the London Resort theme park development was estimated at £3.5 billion and was to be funded by investors.

7. The Company has not started construction of the development. The land on which the theme park was to be built ('the Site') includes four parcels of freehold land registered at HM Land Registry under Title Numbers K448265, K400804, TT129441 and TT129442 (collectively, 'the Freehold Land'). Until May 2024, the Company was the registered proprietor at HM Land Registry in respect of all four title numbers. In May 2024, however, the Company transferred one of the parcels, TT129442, to UKU London Limited. UKU London Limited is now registered as proprietor in respect of TT129442.

8. The Site also includes land which the Company once had an option to purchase ('the Option Land'). The option expired in 2022. The Company's creditors were not told that the option had expired at the time of voting on the CVA proposal.

9. To construct the theme park, the Company required, along with funding of £3.5 billion, a Development Consent Order ('DCO') from the local planning authority. The Company submitted an application for a DCO in January 2021. In March 2021, however, the Site was designated by Natural England (a government body) as a Site of Special Scientific Interest. Subsequently, the Port of Tilbury withdrew their support for the project, undermining the Company's plans for transport to the theme park. This impacted further on the Company's prospects of obtaining a DCO. In anticipation of a rejection, the Company withdrew its application for a DCO in March 2022.

10. The Company proposed a CVA in early 2023 based on a debt equity swap. The debts owed to unsecured creditors would be extinguished and replaced by shares in the Company, at a value of £2 of debt for each ordinary share (with a face value of £0.01p).

11. The valuation used for the purposes of the CVA to value the Company's shares dated from March 2021, before the Site had been declared a Site of Special Scientific Interest, at a time when it still appeared possible for the Company to obtain a DCO and the necessary £3.5 billion of funding, and when it still had an option over the Option Land, widespread support and did not have debts of more than £105 million.

12. At the time of the CVA proposal, the Company told creditors that it intended to submit a revised application for a DCO in 2023. It did not do so.

13. The Company also claimed, in the CVA proposal, that to enable it to carry on its business, it had received funding commitments of £607 million from existing shareholders and an unidentified 'international conglomerate'. It has since been unable to evidence these funding commitments.

14. The value of alleged creditors admitted to vote on the CVA exceeded £105 million, of which:

    i) £31,187,227.41 was allegedly owed to the ultimate parent company, KEH Kuwait;

    ii) £28,300,000 was allegedly owed to Mr Almeajel (as a result of a purported assignment from KEH Kuwait);

    iii) £2,555,867.89 was allegedly owed to Vital Energi; and

    iv) £2,800,000 was allegedly owed to Mr Eden Dervan.

15. The Applicant opposed the CVA proposal. In its view, the prospect of any financial return at all for creditors from the CVA was highly remote; it was dependent upon the Company (which had been loss-making since incorporation) obtaining planning permission to build a theme park on a designated Site of Special Scientific Interest, obtaining £3.5 billion of financial backing to build the theme park, and at some point in the future turning sufficient profit to declare dividends.

16. The CVA was approved on 4 April 2023. A total of 23.3% of the creditors (including the Applicant) voted against the CVA. Those voting against comprised all the unconnected creditors save for some relatively small trade creditors, Mr Almeajel, Vital Energi and Mr

Eden Dervan. The Applicant maintains that the debts voted on by Mr Almeajel, Vital Energi and Mr Eden Dervan are shams. It contends that, once these three debts are excluded, almost all unconnected creditors voted against the CVA.

The CVA Challenge

17. On 5 May 2023, the Applicant issued an application under s 6 of the Insolvency Act 1986, challenging the CVA ('the CVA Challenge'). In broad summary, the Applicant's case in the CVA Challenge is (among other things) that:

    i) the alleged debts to KEH Kuwait, Vital Energi Utilities and Mr Eden Dervan were either wholly fictitious or were artificially inflated by a significant amount;

    ii) the alleged assignment of £28,300,000 of KEH Kuwait's debt to Mr Almeajel was a 'Kapoor' sham manoeuvre, designed to permit Mr Almeajel to vote as an unconnected creditor;

    iii) the CVA would not have passed without Mr Almeajel's vote (as less than 50% of unconnected creditors would have been in favour) and it also would not have passed if the four debts mentioned in [14] above were (individually or cumulatively) overstated by as little as £7 million;

    iv) there were various other material irregularities and misrepresentations in the CVA proposal, including as to the value of the Company's shares and the alleged £607 million funding supposedly offered by existing shareholders and an unidentified international conglomerate; and

    v) the CVA was unfairly prejudicial to Paramount's interests as a creditor.

18. The CVA Challenge is listed for hearing in April 2025. In the meantime, the following interlocutory developments in those proceedings are of note:

    (1) The Company was ordered by Deputy ICC Judge Schaffer to give specific disclosure of documents (such as bank statements) relevant to the issue whether the £65 million alleged to have been loaned to the Company by KEH Kuwait, Mr Eden Dervan and Vital Energi had ever been received by the Company. Prior to the specific disclosure order, some bank statements had been provided by the Company, but they did not evidence receipt of the loans by the Company. No further disclosure has been provided since Deputy ICC Judge Schaffer's order and, contrary to that order, no de jure director of the Company has provided a witness statement confirming that a reasonable search for such documents has been carried out.

    (2) KEH Kuwait and Mr Almeajel had indicated that they wished to dispute the allegations that their debts were shams and so were joined as parties. They have failed to provide any witness evidence regarding the authenticity of the debts purportedly owed to them, however. By the date of the hearing before me, they were almost 7 months out of time to do so.

    (3) The Company failed to exhibit to its witness evidence any documentary evidence in relation to the alleged promised funding commitments of £607 million. Its argument that the documents in question were confidential was rejected by Deputy ICC Judge Jones and the Company was ordered to give inspection and provide copies. In breach

of that order, the Company did not do so. As a result, that part of its evidence has been struck out by the Court.

(4) The Company has stated in witness evidence (in an unsuccessful attempt to avoid being ordered to give specific disclosure) that its IT provider has deleted all its data due to non-payment of fees. In the email exhibited in support of this, the Company also expressly instructed its IT provider to cancel all its internet domain names (including londonresort.com) on the express footing that it would not need them anymore. The Applicant maintains that deletion of all its data, documents and websites is a strong indication that the Company is not trading and does not intend to do so again.

(5) The Company has been unable to pay some fairly modest costs orders (of £16,700) made against it during the course of the CVA Challenge proceedings.

19. The Applicant maintains that, in circumstances where:

i) the Company has been unable to provide any documentary evidence that nearly £65 million of the debt for voting purposes at the CVA was ever actually received by the Company;

ii) KEH Kuwait and Mr Almeajel have not put in any witness evidence defending their debts (around £60 million), such that the Applicant's sham allegations are entirely undefended; and

iii) all the Company's evidence in relation to the proposed funding (the purported £607 million in investment) of its ongoing business activities has been struck out by the Court,

there is virtually no prospect that the CVA will not be set aside by the Court for material irregularity at the final hearing of the CVA Challenge in April 2025.

20. This, the Applicant argues, forms part of the relevant backdrop to the events which have prompted the s 7(3) application before me. The Applicant maintains that the Company has ceased to trade and is now disposing of its assets to put them out of reach of creditors ahead of its liquidation.

21. I turn, then, to consider the present application.

The s7(3) grounds: Overview

22. Section 7(3) of the Act provides that:

> 'If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court; and on the application, the court may – (a) confirm, reverse or modify any act or decision of the supervisor, (b) give him directions, or (c) make such other order as it thinks fit'.

23. The Court's powers under s7(3) to oversee the conduct of the arrangement by the Supervisor are unlimited: Sealy & Milman, Vol. 1, p 94.

24. By its application dated 1 October 2024, the Applicant seeks an order under s 7(3) 'to reverse or modify a decision or omission' of the supervisor. The Application Notice provides:

> 'The CVA Supervisor has decided not to issue a certificate of termination in relation to the CVA and not to petition for the winding up of the Company (or has omitted to take these steps) even though he is expressly required to do so (and has no discretion to do otherwise) under the terms of the CVA because the Company has irremediably breached the terms of the CVA and/or the agreed period of the CVA has expired.'

25. The s 7(3) Application is supported by the witness statement of the Applicant's solicitor, Mr Patrick Lawrence, dated 1 October 2024.

26. In broad terms, the Applicant maintains that:

    i) The Company has irremediably breached fundamental terms of the CVA by:

        a) failing to issue shares to unsecured creditors within 12 months (such shares being the only consideration for which unsecured debts were settled in the CVA);

        b) disposing of its assets for no consideration without the knowledge or approval of the supervisor;

        c) ceasing to trade, and arranging its affairs in a manner that means it will never trade in future; by disposing of land necessary for its business, allowing options over other land to expire; failing to resubmit its application for planning permission; destroying all its data and documents; terminating its website; not obtaining any of the £607 million investment funding promised in the CVA proposal, and not replacing its chairman, CEO or project manager when they each resigned.

    ii) The Applicant maintains that, under the terms of the CVA, each of the above breaches cannot be remedied and expressly require the Supervisor to 'issue a Certificate of Termination and petition for a winding up order without further recourse to creditors'. The Applicant contends that this is a mandatory obligation and that the supervisor has no discretion under the terms of the CVA to decide to do otherwise.

27. The Applicant argues that the CVA needs to be terminated urgently before the Company can dispose of more assets and while there is still some prospect of reversing the transfer of land (ie TT129442) at an undervalue (because, if the transferee sells the land to a bona fide purchaser for value without notice, which could happen at any time, even a liquidator may not be able unravel the transaction or recover any monies paid if those are dissipated). It maintains that the Company needs to be wound up as soon as possible, so that creditors can have the protection of s127 of the Act, and an independent liquidator can be put in place who is able and willing to investigate antecedent transactions.

The Company's cross-application: overview

28. On 8 October 2024, the Company issued a cross-application seeking the following relief:

'(i) The CVA is stayed pending the outcome of the Challenge Application; or

(ii) The Court directs the [Company] to issues [sic] the loan notes and shares; or

(iii) The Court directs the [Company] to seek the creditors consent to the variation of the CVA in order to issue the loan notes and the shares after the determination of the Challenge Application.'

29. The cross-application was directed to be listed for hearing at the same time as the Applicant's s 7(3) application.

The supervisor's position

30. The supervisor, Mr Batty, has not terminated the CVA despite reasoned requests that he do so. Until very shortly before the hearing, his stance was that it was a matter for either the creditors or the court to decide. In correspondence running up to issue of the s7(3) Application, for example, he stated that 'this is a matter to be determined by the Court and the creditors of LRCH, not be [sic] me as the Supervisor'. In my judgment this was not an accurate appraisal of the role of a supervisor in the events which have occurred in the context of this CVA.

31. The supervisor also maintained, until very shortly before the hearing, that he was 'neutral' in relation to the Applicant's s7(3) application. At the eleventh hour, however, he filed a witness statement and instructed Mr Hunter of Counsel to represent him at the hearing. When asked by the court to clarify his client's position, Mr Hunter said that Mr Batty had largely engaged as a result of a challenge to his entitlement to fees and his potential exposure on costs, stating somewhat elliptically that his client was 'not fully neutral but not fully not neutral either'.

32. Mr Batty's witness statement does not read as a 'neutral' witness statement. Read as a whole, it is supportive of the Company's position and opposes the Applicant's position on all fronts. In this regard I refer by way of example to paragraphs [19]-[21] of his witness statement (transfer of land allegation), [22] and [24] (failure to issue shares allegation); [25] failure to trade allegation; [26]-[27] (cross-application); [30] (whether to fail the CVA); [31] (whether the matter is urgent); [32] (whether the supervisor had refused to issue a certificate of termination); and [37] (whether the 7(3) application was necessary).

33. As counsel for Mr Batty, Mr Hunter adopted a similar stance in submissions on a number of the key issues to that adopted by Mr Batty in his evidence.

The CVA Framework: Relevant Principles

34. The effect of a CVA is to establish a statutory "contract" between the Company and the creditors entitled to vote.

35. Ordinary principles of interpretation applying to contracts apply also to the interpretation of a CVA: Heis v Financial Services Compensation Scheme [2018] EWCA Civ 1327 at [22]. As put by Sir Colin Rimer at [22]:

> 'When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood the language in the contract to mean" [….] and it does so by focusing on the meaning of the relevant words… in their documentary, factual and commercial context. That meaning has to be assessed in light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the [contract], (iii) the overall purpose of the clause and the [contract], (iv) the facts and circumstances known or assumed by the parties at the time the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions.'

36. I was also referred to the case of Welsby v Brelec Installations [2000] 2 BCLC 576 per Blackburne J at 585-586:

> 'An arrangement is usually put together in some haste. Modifications to it are frequently made at the statutory meeting of creditors with little time to reflect on how they relate to the other terms of the debtor's proposal. Quite often, as this case demonstrates, the resulting terms are clumsily worded. The arrangement ought therefore to be construed in a practical fashion. Otherwise there is a risk that careless drafting coupled with a too-literal approach to its construction will serve to frustrate rather than achieve the purpose of the arrangement.'

37. Just as the Court cannot rewrite a contract, however, (unless granting rectification), the Court does not have the power to amend/modify the terms of a CVA: Re Alpa Lighting Ltd [1997] B.P.I.R. 341.

38. The scheme takes effect upon approval (in this case, 4 April 2023). Thereafter it is effective (and not suspended) even if a challenge is mounted under s 6 of the Act: Sealy & Milman: Annotated Guide to the Insolvency Legislation 2024, Vol. 1 at p 93.

39. The primary duty of any CVA supervisor is to implement the CVA in accordance with the Insolvency Act, the Insolvency Rules and the terms of the proposals. Any power or discretion given to a supervisor is to be exercised for that purpose only, and not for any collateral purpose. As an officer of the court, the supervisor must also act reasonably: Appleyard v Ritecrown [2009] B.P.I.R. 235.

40. As an officer of the Court, a supervisor is also subject to the ethical duties imposed by the rule in Ex p. James (1873-74) L.R. 9 Ch. App. 609.

The Cross-Application: Discussion and Disposal

41. Initially Mr Ian Mayes KC appeared at the hearing on behalf of the Company, instructed by Judge Sykes Frixou. During the course of the hearing, however, it became clear that Judge Sykes Frixou and Mr Mayes KC were being instructed by Mr Al-Humaidi and not by a de jure director of the Company. Mr Mayes and Mr Ansell of Judge Sykes Frixou told the court that a de jure director of the Company, Dherar (Mr Al-Humaidi's

brother), had given Mr Al-Humaidi a standing authority to liaise with and give instructions to Judge Sykes Frixou on the Company's behalf in relation to the litigation regarding the CVA.

42. When it was pointed out by the court that section 11 of the Company Directors Disqualification Act 1986 makes it a criminal offence for an undischarged bankrupt directly or indirectly to take part in or be concerned in the management of a company without the leave of the court, Mr Mayes KC, having been allowed time for reflection, withdrew from the hearing.

43. Mr Max Ansell of Judge Sykes Frixou did not withdraw from the hearing, but instead requested an adjournment, to allow time for him to seek instructions from 'the board' (ie the de jure directors of the Company, Robert MacNaughton and Dherar).

44. I declined Mr Ansell's request for an adjournment. It was questionable whether Mr Ansell could (or should) be treated as acting on behalf of the Company when making that application for an adjournment, given the provenance of his instructions at that stage, but even putting that issue to one side, no persuasive grounds for an adjournment were advanced. In my judgment it would be contrary to the overriding objective (in particular CPR 1.1(2)(d) and (e)) to delay final disposal of this (plainly) urgent application.

45. The fact that Mr Al-Humaidi was an undischarged bankrupt did not come as a surprise to Judge Sykes Frixou, as the firm had acted for him in his bankruptcy proceedings. As recently as 27 August 2024, when pressed to respond substantively to the Applicant's correspondence dated 26 July, 31 July, 15 August, and 23 August 2024 regarding the unheralded transfer by the Company to UKU London Limited of plot TT129442 and asked (in terms) by letter dated 15 August to inform the Applicant if he was no longer acting for the Company, Mr Ansell had replied by email dated 27 August: 'I am currently unable to respond on behalf of [the Company]'. At the hearing before me, Mr Ansell explained that he had then (in August 2024) 'sought authority to take instructions from [Mr] Al Humaidi'. In my judgment this was a high-risk strategy for Mr Ansell to adopt. Mr Ansell was again reminded, shortly before the hearing, by the Applicant's letter of 1 October, that he appeared to be taking instructions from an undischarged bankrupt and yet pressed on regardless. In short, this was not a case of a solicitor being taken by surprise on the day of the hearing; far from it.

46. Similarly, the de jure directors of the Company either knew or ought to have known that as an undischarged bankrupt, Mr Al-Humaidi was prohibited from directly or indirectly taking part in or being concerned in the management of the Company.

47. The cross-application itself was in any event misconceived. Contrary to rule 1.35(2)(b) IR 2016, the application notice did not identify the section of the Act or number of the Rule under which it was made. Read as a whole, together with the statement of Mr Al-Humaidi dated 8 October 2024 filed in support, it did not appear that the Company claimed to be a 'person dissatisfied' by any act, omission or decision of the supervisor and no given act, omission or decision of the supervisor was identified in the supporting statement as the focus of any complaint by the Company in the context of the cross-application; in such circumstances the Company did not clear the threshold requirements for locus to apply under for any relief under s 7(3) IA 1986. The Company had no locus to apply for relief under s7(4) either, as only a supervisor can make an application under s 7(4).

48. Even putting issues of locus to one side, however, the CVA is a statutory contract and the court has no power to vary it: Re Alpa Lighting Ltd [1997] BPIR 341. The case of Re Alpa

concerned an application by a supervisor under s 7(4) for an order extending the payment timetable provided for in a CVA and deferring its completion date, as the company was in difficulty meeting the timetabling originally voted on. At first instance, Evans-Lombe J held that he had no jurisdiction to make such a change on an application for directions. The Court of Appeal dismissed the appeal, holding that the right of a supervisor to seek directions under s 7(4) did not include a right to invite the court to amend an arrangement. The court described the supervisor's application as misconceived.

49. I pause here to note that the Court of Appeal authority of Re Alpa Lighting is over 25 years old; this is not a new development. Somewhat surprisingly, Mr Al-Humaidi's evidence (at paragraph 54 of his witness statement) was that it was at the supervisor's suggestion that the Company had made its cross-application; and the supervisor, Mr Batty, actively supported the Company making the cross-application at paragraph 27 of his own witness statement.

50. The fact that the cross-application in this case also seeks a 'stay' does not assist the Company. The CVA is a statutory contract, not a set of legal proceedings; it cannot be 'stayed' using conventional CPR powers. In reality, in my judgment the request for a stay is simply a request for a variation by the back door and, as made clear in Re Alpa, the court has no power to vary an arrangement. I would add that, for reasons which I shall come on to, the CVA has in any event already failed.

51. The relief sought at (iii) of the cross-application notice (an order directing a further creditors' meeting) takes matters no further. Again, the CVA has already failed. Moreover, in the events which have occurred, under the express terms of the CVA, the supervisor is obliged to issue a certificate of termination.

52. For all these reasons, the cross-application shall be dismissed.

53. I turn next to consider the key provisions of the CVA relied upon for the purposes of the Applicant's s7(3) application.

The CVA

54. The CVA comprises a set of 'bespoke' terms set out in the proposal itself and a set of standard terms set out in Appendix A to the proposal. Paragraph 22 of the proposal provides that where there is any conflict between the two, the bespoke terms in the proposal will prevail.

55. The scheme was based on a debt equity swap. Paragraph 26 of the proposal provided:

> '26. The Board is proposing to:
>
> (i) Issue Loan Notes to Preferential and 2nd Preferential creditors. These Loan Notes will be re-paid in full within 2 years of the CVA being agreed, no interest will be paid.
>
> (ii) Issue of new ordinary shares to unsecured creditors.'

56. Paragraph 68 of the proposal provided that:

> 'The Supervisor will oversee the issue of shares to creditors by the Company Secretary…'

57. The period of the Arrangement was 12 months. Paragraph 35 of the proposal provided:

> 'The period under the Arrangement will be up to 12 months. After this period, the Arrangement can continue for 3 months to allow the Supervisor to make the final distribution in the form of issuing Loan Notes and complete their administration of the proposal'.

58. Under paragraph 27 of the proposal, a cash sum of £50,000 was to be paid into the CVA within 60 days of approval to settle the costs and expenses of the CVA.

59. Paragraph 28 of the proposal provided:

> 'For the avoidance of doubt, no other assets will be available to creditors'.

60. Paragraph 73 of the proposal provided that:

> 'The Company will continue to trade. This will enable maximum value to be achieved from funds to be generated from future operations and the survival of the Company.'

61. Condition 50 of the standard terms provided that:

> 'If the Company continues to trade, it shall carry on its trading in accordance within [sic] the terms of the CVA and in such a manner as is likely to enhance the profitability and solvency of the Company and maximise the dividend payable to creditors under the CVA'

62. Paragraph 76 of the proposal provided that:

> '… In the event that the Company fails to meet the trading liabilities falling due within the period of the Arrangement, this will constitute a default.'

63. Condition 44 of the standard terms provided that 'If the terms of the CVA provide for the Company to continue to trade (but not otherwise) conditions 44-47 shall apply'. Condition 45 required the Company 'to keep the Supervisor informed of any material developments in relation to the Company's business'. Condition 47 required the Company to 'meet its day to day liabilities including any credit extended as and when they fall due' and to 'report to the Supervisor in writing if at any stage it becomes unable to pay its debts as they fall due'. Condition 48 of the standard terms went on to provide:

> 'Unless and until the CVA is completed successfully, the Company shall not sell, charge or otherwise encumber its assets or agree to sell, charge or otherwise encumber its assets or any part of them or make any material change to its business without the written consent of the Supervisor'.

Effect of breach of CVA Terms

64. Paragraph 56 of the proposal provides (with emphasis added):

> '56. (Non-compliance) Failure to comply with any term of the arrangement will constitute a breach of the company's obligation under the arrangement. The supervisor will work with the company to remedy any breach of obligation. Rule 15.3(3 and 4) (requisite majorities) will apply where any variation is proposed.
>
> If any breach of obligation **is not remedied within 30 days of its occurrence this will constitute a default of the arrangement that cannot be remedied and the supervisor shall issue a Certificate of Termination and petition for a winding up order without further recourse to creditors**'

65. To the extent that any other terms of the CVA appear inconsistent with paragraph 56 of the proposal, in my judgment, reading the proposal and standard terms as a whole and applying the guidance given by Blackburne J in Welsby v Brelec Installations, I conclude that paragraph 56 prevails.

66. I turn next to consider the breaches relied upon by the Applicants.

The breaches

Failure to issue shares within 12 months or loan notes within 15 months

67. As will be recalled, the only consideration provided by the Company in exchange for £105 million of non-preferential unsecured debt was share capital: it proposed to issue one ordinary share for each £2 of debt. The only consideration given to preferential creditors was loan notes.

68. The Applicant maintains that the terms of the CVA required the shares to be issued within 12 months from the date of approval (i.e., by 3 April 2024) and loan notes within 15 months (i.e., by 3 July 2024). This is on the footing that the entire CVA was expressly only intended to last for a maximum of 12 months, with scope for extension to 15 months only to allow the issuance of loan notes (because the shares should have been issued within 12 months).

69. I accept the Applicant's analysis on this issue. In my judgment, it was an implied term of the arrangement that the shares would be issued within 12 months of the date of approval (i.e. by 3 April 2024). The implication of a term that the shares would be issued within the 12 month period of the arrangement is plainly warranted as necessary to give business efficacy to the contract and/or as being 'so obvious that it goes without saying'.

70. Indeed, the Company does not suggest otherwise. By his witness statement dated 8 October 2024, filed on behalf of the Company, Mr Al-Humaidi states at [26]:

> '… the CVA Proposal does not specifically state when the loan notes and shares should be issued, however I do accept that the

> CVA was only to last 12 months. As such I can see how it could be argued that this is an effective breach.'

71. At [29], Mr Al-Humaidi continued, 'There was never any intention on behalf of [the Company] to not honour its obligations under the CVA,' tacitly accepting that it had not.

72. At paragraph 24 of his witness statement, Mr Batty observed that the proposals did not set an express time period by when the loan notes and new shares should be issued but acknowledged that 'given it had a duration of 12 month [sic], it could be argued that this was the implicit time period'. This accorded with his own Nominee Report, which had stated at paragraph 6:

> 'These [ordinary shares] will be issued within 12 months from the decision date approving the CVA proposals'.

73. Mr Batty went on his statement, however, to suggest that a further term should be implied in the proposal that the 12 month period should not run pending final disposal of any challenge to the validity of the CVA. This was also put forward by counsel on Mr Batty's behalf at the hearing. I reject this suggestion. The mere issue of a s 6 challenge does not operate as a stay. The implication of such a term is certainly not 'so obvious that it goes without saying'. Nor is it 'necessary to give business efficacy to the contract', as the arrangement already contained conventional mechanisms for the creditors bound by the arrangement to agree variations had they so wished.

74. Both Mr Al-Humaidi and the supervisor sought to blame the CVA Challenge proceedings for the delay. Mr Al-Humaidi stated that it would be 'pointless' to proceed with the issue of the loan notes and shares pending the determination of the CVA Challenge as, if it was successful, the steps would have to be reversed. He also relied on the costs involved in issuing the loan notes and shares. Mr Batty expressed a similar view at paragraph 22 of his witness statement, stating that it would be 'inappropriate' to issue the loan notes and shares pending final determination of the CVA Challenge and that it would 'difficult and costly' to cancel the loan notes and shares issued.

75. The attempts of the Company and the supervisor to blame the CVA Challenge as somehow preventing the issuance of shares are entirely unpersuasive. The CVA Challenge does not operate as a stay and did not prevent the terms of the CVA becoming effective from April 2023.

76. The suggestion that the cost of the exercise would be prohibitive is not supported by the evidence; the Company's own estimate (at paragraph 69 of the proposal) of the costs of issuing loan notes and shares was £2,000. In my judgment cancelling such shares and loan notes if the CVA Challenge was successful would not be a costly and complex affair either. On present facts, no dividends would have been declared in the interim and such matters could readily be dealt with as consequentials in the CVA Challenge or alongside such consequentials at minimal additional cost.

77. Ultimately, however, when considering the issue of whether the Company has breached the terms of the CVA, it is irrelevant whether the Company or supervisor thought that they had a good reason for not issuing the shares within 12 months of the approval of the CVA. The CVA is a statutory contract. It is not open to one party to it to pick and

choose which terms to comply with. Under the terms of the arrangement, the Company was obliged to issue shares to the CVA creditors within 12 months and failed to do so.

78. In my judgment, the Company's failure to issue shares to the arrangement creditors within 12 months (ie by 3 April 2024) constituted a breach of paragraphs 26 and 35 of the proposal. As that breach was not remedied within 30 days of its occurrence, by operation of paragraph 56 of the proposal, it is 'a default of the arrangement that cannot be remedied'. In such circumstances, under paragraph 56 of the proposal, on the expiry of 30 days from 3 April 2024, the supervisor was under an obligation to 'issue a certificate of termination and petition for a winding up order without further recourse to creditors.'

79. This, of itself, is sufficient to dispose of the application. As I heard full argument on the two other limbs of the application, however, I shall address these as well. My ultimate decision on the s 7(3) application is based on the conclusions reached on all 3 limbs of the application.

Transfer of land for no consideration

80. Creditors were told in the CVA proposal that the only real asset of the Company available in a liquidation was the Freehold Land owned by the Company (the four parcels together valued, by the directors themselves, at £500,000). The statement of affairs prepared in connection with the proposal, signed by a de jure director and bearing a statement of truth, refers to 'freehold land' with a book value of £515,455, estimated to realise £500,000. The comparison of outcomes in liquidation and CVA refers to estimated total assets in liquidation (before costs) as £500,000 and refers back to the statement of affairs. Read in context, it is clear that the 'total assets in liquidation' figure of £500,000 given in the estimated comparison of outcomes is a reference to the value of the Freehold Land.

81. The Freehold Land, being an integral part of the Site on which the theme park is to be built, was not only presented in the proposal as the Company's only asset, but was central to its business and therefore to the CVA; without the Site, there was no land on which the theme park could be built.

82. The Applicant submits that one of the fundamental contractual bases on which creditors were deemed to have agreed the CVA was that the Company would not (at least not without the consent of the Supervisor) dispose of any of the land on which it proposed to build the theme park. The Applicant contends that this intention is reflected (inter alia) in conditions 44-45 and 48 of the standard terms, the material parts of which (for ease of reference) are reproduced below:

> Condition 44:
>
> > 'If the terms of the CVA provide for the Company to continue to trade (but not otherwise) conditions 44-47 shall apply.'
>
> Condition 45:
>
> '…The Company also undertakes to keep the Supervisor informed of any material developments in relation to the Company's business'.
>
> Condition 48:

> 'Unless and until the CVA is completed successfully, the Company shall not sell, charge or otherwise encumber its assets or any part of them or make any material change to its business without the written consent of the Supervisor'.

83. The Applicant also relied upon Condition 52 of the standard terms, but as this provision was expressly only to apply 'if the CVA provides for the sale of the business and/or any assets of the Company', it is not relevant for present purposes.

84. On 8 May 2024, without any notice to the supervisor or the Applicant (as the holder of an interim charging order), the Company transferred one of the four parcels of the Freehold Land (TT129442) to a third-party company called UKU London Limited, stating in the transfer document that 'the transfer is not for money or anything that has a monetary value'. UKU London Limited is now the registered proprietor of that part of the Freehold Land.

85. The Applicant did not discover the transfer until 22 July 2024 when the Company's solicitors wrote to the Applicant purporting to 'give notice' (after the event) of a transfer that had occurred on 8 May 2024.

86. After discovering the transfer, the Applicant wrote 6 times to Mr Ansell of Judge Sykes Frixou to ask about what consideration was given and why the Applicant was not given notice in accordance with the restriction registered at HM Land Registry in respect of the plot. Mr Ansell gave no substantive response (despite promising to provide one by 21 August) and ultimately wrote on 27 August 2024 stating that he/Judge Sykes Frixou were 'currently unable to respond on behalf of LRCH'.

87. The supervisor had no prior notice of the transfer. On 14 August 2024 and again (having received no response to their first letter) on 23 August 2024, the Applicant wrote to the supervisor about the transfer of land and asked if he had given prior written consent to it. On 30 August 2024, the supervisor confirmed that (until the Applicant informed him) he was 'not aware of the transfer of land you refer to and will raise this with LRCH before proceeding further'.

88. A further 5 weeks then passed in the run-up to the hearing on 10 October 2024, without the supervisor providing any substantive response on the matter.

89. It was only very shortly before the hearing that the Company and the supervisor each responded on the issue of the transfer of plot TT129442.

90. By his witness statement dated 9 October 2024, Mr Batty maintained (at [19]) that condition 48 of the standard terms had to be read as subject to paragraph 28 of the proposal, which, it will be recalled, provides that, save for the debt-equity swap, 'no other assets will be available to creditors.' He states that 'Accordingly, the Company remains in control of its assets and does not need any consent from the Supervisor to deal with its assets and this is not a breach of the Arrangement.'

91. At paragraph [20] of his witness statement, Mr Batty went on to state that he had been told by (unnamed) 'representatives of the Company' that plot TT129442 was 'held on trust' for UKU at the date of the CVA. He said that he did not consider the non-disclosure of this in the CVA to constitute a 'material inaccuracy/non-disclosure', on the basis that 'the land was not in any event an asset of the CVA which was available to creditors per paragraph 28 of the CVA Proposals.'

92. Mr Batty also observed that the Applicant had a charge over the land in any case. This was a reference to the interim charging order held by the Applicant.

93. Similar points were put forward by counsel on behalf of Mr Batty in submissions.

94. The Company's position on the transfer of TT129442 to UKU in May 2024 was set out in the witness statement of Mr Al-Humaidi filed on its behalf.

95. Mr Al-Humaidi's explanation was that TT129442 did not belong to the Company in the first place but was instead held on trust for UKU. In this regard he relied upon documents described as declarations of trust which were exhibited to his witness statement. At paragraph 14 of his witness statement, he maintained that 'the transfer which Paramount complains of simply acted to reflect the Declarations'. He went on to state that the transfer did not breach conditions 45, 48 or 52 and did not prejudice the CVA creditors in any way as the plot was not an asset in the CVA in any event.

96. The first declaration of trust exhibited to Mr Al-Humaidi's witness statement is dated 20 July 2020. It is expressed to be executed as a deed but bears only one signature and so is not a deed. It is made between the Company and UKU and is said to relate to K448265 (defined as 'the Property'), not the transferred plot (TT129442). Recital A states that the Company was registered at HM Land Registry as the proprietor of the Property on 9 July 2015. Recital B continues (with emphasis added): '[UKU] *contributed towards the costs of* the purchase of the Property *with the intention of acquiring* the beneficial interest in the Property as hereinafter declared'. By clause 2 of the document, the Company then declares that it holds the Property on trust *as to 100%* for UKU.

97. The second declaration of trust relied upon is dated 4 January 2021 and made between the Company and UKU. Again, it is expressed to be executed as a deed but it bears only one signature and is not a deed. Again, it relates to title number K448265 (not the transferred plot, TT129442). It does refer to the first declaration of trust but makes odd reading. It purports to make a declaration on behalf of both the Company and PBH (UK) Holdings that UKU 'fully owns' 2 acres of title number K448265, to be used for the construction of 180 dwellings, yet PBH (UK) Holdings is not a party to the document.

98. The explanation put forward in Mr Al-Humaidi's witness statement (at paragraph 13) for the reference in the declarations of trust to title number K448265 (rather than the transferred plot, TT129442) is that TT129442 'was previously part of K448265, and transferred out and given its own title number'. The problem with this explanation is that it is clear from the property registers for K448265 and TT129442 in evidence that TT129442 was separated out from K448265 in September 2010, some 5 years prior to the Company's registration at HM Registry as registered proprietor of K448265 and some 10 years or more prior to the declarations of trust. Considered against that backdrop, Mr Al-Humaidi's explanation was utterly implausible.

99. Mr Al-Humaidi also relied in his statement on restrictions entered against the registered titles to the various plots making up the Freehold Land, which he maintained reference the declarations of trust. The office copies in evidence relating to K448265 and K400804 do not reference the declarations of trust. The office copies in evidence relating to TT129441 refer to a different declaration of trust; a declaration of trust dated 4 January 2021 made between (1) the Company and (2) Althagb Commercial Company, not UKU. It is only the office copies in evidence relating to TT129442 that contain a restriction registered on 31 August 2021 referring to two declarations of trust made between the Company and UKU and dated respectively 20 July 2020 and 4 January 2021 – but as previously indicated, the

declarations of trust themselves, as exhibited to Mr Al-Humaidi's statement, do not relate to TT129442: see [96]- [98] above.

100. The suggestion that the Company did not beneficially own the four plots comprising the Freehold Land was not how matters were presented to creditors in the proposal: see [80] above. Nor is it how the Company has been presenting its case in the s 6 CVA Challenge proceedings. In those proceedings, at a hearing on 8 February 2024 at which the Company was represented by both solicitors and Counsel, Deputy ICC Judge Schaffer ordered that a joint single expert be appointed to value the Freehold Land. There was no suggestion by counsel representing the Company at that hearing that it would be pointless to appoint a valuation expert as the Company did not beneficially own the Freehold Land anyway. In the follow up correspondence exchanged between the solicitors acting for the Applicant (Clintons) and the Company respectively, Clintons by letter dated 27 March 2024 sent the Company's solicitors for their approval a draft letter of instruction to the expert, inviting the expert to value the 4 parcels of land making up the Freehold Land. By a later email dated 5 April 2024 from the Company's solicitors to Clintons, Mr Ansell confirmed that his client had 'no concerns' over the instruction of a Mr Shapiro as expert for the purposes of the proposed valuation. As recently as April 2024, therefore, the Company's position was that it did own the 4 parcels of land in question. As will be recalled, since learning of the transfer of plot TT129442 to UKU in July 2024, Clintons have written 6 times to the Company' solicitors seeking an explanation, and yet none was provided. The first explanation of any sort came two days before the hearing, in the form of the witness statement dated 8 October 2024 of Mr Al-Humaidi, who as previously noted is not a de jure director of the Company.

Discussions and conclusions on the transfer of plot TT129442

101. In my judgment, the transfer by the Company of plot TT129442 to UKU in May 2024 was a material change to the Company's business for the purposes of conditions 45 and 48 of the standard terms. I reject the attempts of the Company and the supervisor to downplay the materiality of the transfer on grounds that TT129442 was not an asset in the arrangement and/or was not beneficially owned by the Company. The Freehold Land, being an integral part of the Site on which the theme park is to be built, was not only presented in the proposal as the Company's only asset but was obviously central to its business and therefore to the CVA; without the Site, there was no land on which the theme park could be built.

102. In my judgment, whether or not the Company was the beneficial owner of the plot in question, the transfer of the plot to a third party, without putting any corresponding arrangement in place to ensure that the Company could still use the plot as an integral part of the Site for the development, was in my judgment a material change to the Company's business.

103. At the time that the transfer of TT129442 took place, the supervisor had not consented in writing to the transfer and indeed knew nothing about it. In my judgment, this constituted a breach of condition 48 of the standard terms, which prohibits the Company from making any material change to its business without the written consent of the supervisor. As that breach was not remedied within 30 days of its occurrence, by operation of paragraph 56 of the proposal, it constituted 'a default of the arrangement that cannot be remedied'. In such circumstances, under paragraph 56 of the proposal, on the expiry of 30 days from the date of the transfer, the supervisor was under an

obligation to 'issue a certificate of termination and petition for a winding up order without further recourse to creditors.'

104. In the events which have occurred, in relation to the land transfer, the Company is also in breach of condition 45 of the standard terms, in particular its obligation to 'keep the supervisor informed of any material developments in relation to the Company's business'. From the supervisor's letter dated 30 August 2024, it is clear that he was unaware of the development in question until receipt of the Applicant's solicitor's letter dated 14 August 2024, significantly more than 30 days after the transfer of the plot. Again, in my judgment the Company's failure to remedy the breach within 30 days rendered the breach in question 'a default of the arrangement that cannot be remedied' for the purposes of paragraph 56 of the proposal; again triggering an obligation on the part of the supervisor to issue a certificate of termination.

105. I would add that, even if, contrary to my primary conclusions on this limb of the application, the Company was not in breach of conditions 48 and 45 of the standard terms of the CVA, the Company would simply be guilty of a different breach of the arrangement leading to the same result. Condition 75 of the standard terms provides that:

> 'The following shall be regarded as events of breach for the purposes of the CVA:
>
> …
>
> 75.2 if it shall come to the Supervisor's attention that either the Proposal or the statement of affairs contains any deliberate or material inaccuracy or there has been a material non-disclosure of the Company's assets.'

106. The Freehold Land was presented in the proposal and the statement of affairs as the Company's only asset: see [80] above. If, as the Company now maintains, the Freehold Land was not owned by the Company at the time of its entry into the CVA, the presentation of that land in the proposal and the accompanying statement of affairs as an asset of the Company was in my judgment (at the very least) a 'material inaccuracy'. Again, I reject the supervisor's attempts to downplay materiality on the ground that the land was not an asset in the arrangement. It was plainly material in a number of ways. The Freehold Land was an integral part of the Site on which the theme park is to be built. It was obviously central to the Company's business and therefore to the CVA; without the Site, there was no land on which the theme park could be built. It was also material to the estimated statement of outcomes, which formed an integral part of the CVA proposal on which creditors voted.

107. Under condition 75.2 of the standard terms, such a material inaccuracy would qualify as an 'event of breach' which, on the expiry of the requisite 30 day period, would trigger the irremediable breach provision set out at paragraph 56 of the proposal.

108. In short, either (i) the transfer of plot TT129442 was a material change to the Company's business made without the written consent of the supervisor and without informing the supervisor, in breach of conditions 48 and 45 respectively, or (ii) the presentation of plot TT129442 as an asset of the Company in the CVA proposal and

statement of affairs was a material inaccuracy triggering an event of breach under condition 75.2. Either way, on the expiry of the requisite 30 day period, the irremediable breach provision set out in paragraph 56 of the proposal would be engaged.

109. I accept that there may be an argument that as at 10 October 2024 (the date of the hearing), the 30 day period for the purposes of condition 75.2 may not have elapsed, on the footing that there may be an argument that for the purposes of condition 75.2, time runs from the point at which the relevant inaccuracy or non-disclosure 'come[s] to the supervisor's attention' and the Company had only recently suggested that it held plot TT129442 on trust for UKU as sole beneficial owner. As my primary conclusion on this limb of the 7(3) application is that the Company is in breach of conditions 48 and 45 of the standard terms, however, (and in light of my conclusions on the other two limbs of the 7(3) application), little turns on this. As rightly submitted by the Applicant, making out any one of the three limbs suffices for present purposes.

Failure to carry on trading

110. As will be recalled, it was a requirement of the arrangement that the Company should continue to trade. Paragraph 73 of the proposal provided as follows:

> 'The Company will continue to trade. This will enable maximum value to be achieved from funds to be generated from future operations and the survival of the Company.'

Condition 50 of the standard terms provided that:

> 'If the Company continues to trade, it shall carry on its trading in accordance within [sic] the term of the CVA and in such a manner as is likely to enhance the profitability and solvency of the Company and maximise the dividend payable to creditors under the CVA.'

111. Paragraph 76 of the proposal also provides:

> '.. In the event that the Company fails to meet the trading liabilities falling due within the period of the Arrangement, this will constitute a default.'

112. On behalf of the Applicant, Mr Lawrence lists in his witness statement a number of factors which, the Applicant maintains, make it clear that the Company has ceased to trade and is unlikely to trade in the future. The factors relied upon include the following:

(1) The Company has transferred some of the land on which the project was to be built and will not be able to build the project in future without that land;

(2) The Company's option over the Option Land (forming part of the Site on which the project was to be built) expired in December 2022 and has not been renewed since. The company that owns the Option Land, Swanscombe Development LLP, is being sold, so there are at best uncertain prospects of the option being renewed in the future.

(3) The Company's website (www.tlrworld.com) no longer exists and the domain is no longer in use; it is owned by an internet domain registry and is available for purchase.

(4) The Company's local listing on Google states that the Company is 'permanently closed'.

(5) In the CVA Challenge, the Company told the court in December 2023 that it agreed to have all its electronic data, documents and records deleted. A later witness statement of Mr Ansell dated 7 February 2024 filed in relation to disclosure on behalf of the Company in the CVA Challenge exhibited inter alia a letter from Judge Sykes Frixou to Clintons dated 26 January 2024 confirming that 'the IT Company holding the Company's data deleted the data due to non-payment of their invoices' and an email from Mr Maru of KEH Group to the Company's IT provider (Zenzero) stating (with emphasis added):

> 'please be advised to cancel all the list of domain names as we do not use them from quite a long time, ***the only used domains were armilcapital.com and londonresort.com which we do not need anymore***. Kindly, please cancel all the contracts, licenses and everything with Zenzero.'

As observed by Mr Lawrence, this is not consistent with a company that is continuing to trade or intends to do so in the future.

(6) In March 2024, Steven Norris, the Company's long-term chairman and director, resigned and has not been replaced. This followed the resignation of Pierre-Yves Gerbau, the Company's CEO, in December 2022, who has also not been replaced. At present there appears to be no chairman, CEO or project manager in place, which again is not consistent with a trading company.

(7) The funds of approximately £607 million required to move the project forward, which the Company represented in the proposal had been committed to the Company upon the approval of the CVA, have not materialised. The Company has been unable to evidence the same in the CVA Challenge and that aspect of its case has been struck out.

(8) Mr Al-Humaidi, a main financial backer and person controlling the Company, was adjudicated bankrupt on 6 November 2022 and is the subject of one or more international arrest warrants for fraud convictions in Kuwait.

(9) Since the CVA was approved, the Company has been unable to pay its debts in the ordinary course of business. It has been unable to pay the Applicant modest costs orders totalling £16,700 arising from the CVA Challenge proceedings for example. It has also been unable to pay its IT provider, Zenzero.

113. The Applicant informed the supervisor of the foregoing factors by letters dated 28 June 2024 and 14 August 2024, stating that it was clear that the Company was not trading and was unlikely ever to trade again. Notwithstanding that correspondence (and notwithstanding having had sight of Mr Lawrence's witness statement since), the supervisor stated in his witness statement at paragraph 25:

> 'I have seen no evidence to suggest that the Company has been closed down, Paramount appears to be relying on the fact that a website www.tirworld.com no longer existing [sic] as evidence that the Company is no longer trading.'

114. As will be seen from [112] above, however, the evidence of cesser of trading goes far beyond the closure of one website.

115. Mr Batty also stated (at [25] of his witness statement) that the Company was 'an investment company', adding 'as such the definition of "trading" is subjective.'

116. I pause here to note that paragraph 2 of the proposal does not describe the Company as simply an 'investment company'. It states that the Company was incorporated in 2011 'to develop and operate' the London Resort.

117. Mr Batty's stance on the trading issue is even more surprising when compared to that of the Company. On behalf of the Company, Mr Al-Humaidi at paragraph 37 of his statement states:

> 'LRCH [the Company] cannot trade as a business at this time with the Challenge Application outstanding. The parties who have offered to fund the business of [the Company] are not willing to advance any funds if there is a risk that the Challenge Application will be successful, as were that to be the case they would lose their investment.'

118. Whilst he does go on (at paragraph 39 of his statement) to state that 'LRCH is a holding company and would never trade', this is simply a matter of semantics. Mr Al-Humaidi accepts that the Company is not progressing the development (paragraph 39). He also accepts that the option agreement has expired (paragraph 41); a matter not disclosed to creditors at the time of the proposal. He tacitly accepts that no steps have been taken to renew the option agreement, seeking to excuse this on the (entirely unsubstantiated) basis that the option 'is no longer necessary' as the development 'has the ability to acquire the land by way of compulsory purchase'. No documentary evidence was adduced in support of this assertion.

119. Mr Al-Humaidi accepts that the Company's website is no longer in use. At paragraph 43 of his statement, he states that the website 'is not currently necessary' and that maintaining it was 'a waste of resources'. He goes on to claim that 'this will be addressed when the Challenge Application has been disposed of'. I pause here to note that the suggestion that the website will be revived following disposal of the CVA Challenge is inconsistent with the language of permanence used in Mr Maru's email to the Company's IT providers regarding domain names, referred to at [112(5)] above; in particular, the phrase: 'we do not need anymore'.

120. Mr Al-Humaidi admits (at paragraph 44 of his statement) that the Company's electronic data has been deleted. He states that the Company 'could not meet the costs of storage'; a further breach, I note: see paragraph 76 of the proposal, reproduced at [111] above. He offers no explanation of how, realistically, the Company could be expected to recommence trading on a project of this size and complexity with all its data deleted.

121. At paragraph 45 of his statement, Mr Al-Humaidi goes on tacitly to admit that the DCO application has not been resubmitted, contrary to representations made in the proposal that it would be resubmitted in 2023.

122. Mr Al-Humaidi also accepts that the Company has no Chairman (and does not dispute that the Company has no CEO or project manager either), stating simply at paragraph 46 of his

statement 'once the Challenge Application has been disposed, LRCH will reconsider its needs'.

Discussion and Conclusions

123. Whatever definition of 'trading' one adopts for current purposes, on the evidence as a whole it is in my judgment plain that the Company ceased to trade during the course of the CVA and has not recommenced trading since. In the events which have occurred, including in particular those summarised in [112] above, it appears unlikely ever to do so again.

124. Under paragraph 73 of the proposal and condition 50 of the standard terms, the Company was required to carry on trading and to do so in a manner likely to enhance the profitability and solvency of the Company. This was a central obligation of the CVA because, given the Company's shares are not publicly traded, the only prospect of creditors receiving monetary value from the CVA would be if the Company eventually traded to profitability.

125. The obligation to carry on trading was not conditional in any way. Whatever reasons may exist for the Company having stopped trading, creditors cannot and should not be held to a bargain different to that to which they agreed.

126. In my judgment, the failure of the Company to carry on trading during the course of the CVA is a breach of paragraph 73 of the proposal and condition 50 of the standard terms. On the evidence before me, it is clear that by the time of the hearing on 10 October 2024, considerably more than 30 days had elapsed since that breach first occurred; in reality, at least several months and quite possibly over a year had passed since the date of the breach. On the expiry of the 30 day period, by operation of paragraph 56 of the proposal, the breach became irremediable and the supervisor, Mr Batty, was required to issue a certificate of termination and to present a winding up petition.

Conclusions

127. In summary:

(1) for the reasons given in paragraphs [41] to [52] of this judgment, the Company's cross-application is misconceived;

(2) the Company's failure to issue shares to the arrangement creditors by 3 April 2024 was a breach of paragraphs 26 and 35 of the proposal;

(3) the Company's transfer of plot TT129442 to UKU in May 2024 without the prior written consent of the supervisor and without informing the supervisor was a breach of conditions 45 and 48 of the standard terms;

(4) the Company's cesser of trading during the course of the CVA was a breach of paragraph 73 of the proposal and condition 50 of the standard terms;

(5) each of the foregoing breaches was not remedied within 30 days of its occurrence;

(6) by operation of paragraph 56 of the proposal, the breaches are irremediable;

(7) in the events which have occurred, the supervisor is obliged under paragraph 56 of the proposal to issue a certificate of termination and to petition for a winding up of the Company without further recourse to creditors.

128. For all these reasons, I made an order (i) declaring that the Second Respondent ('the Company') was in irremediable breach of the terms of the CVA which it had entered with its creditors in April 2023 (ii) directing the First Respondent as supervisor to issue a certificate of termination by midday 11 October 2024 and (iii) dismissing the Company's cross-application.

129. It is in my judgment regrettable that in the face of (at least) three serious and irremediable breaches of the terms of the CVA, the supervisor failed to comply with his obligations under paragraph 56 of the proposal to issue a certificate of termination and to present a winding up petition. It is clear from the evidence before me that he was warned repeatedly in correspondence by the Applicant's solicitors about the breaches and their consequences under the terms of the CVA and yet failed to act. It is clear from the receipts and payments accounts in evidence that this was not due to lack of funds. The supervisor was in funds to take action but failed to do so. Had he taken appropriate steps at the appropriate time, this s 7(3) application would not have been necessary.

130. I will hear submissions on costs and any further directions required on the handing down of judgment.

ICC Judge Barber