



Neutral Citation Number: [2025] EWHC 1786 (Ch)

CR-2023-004410

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

**IN THE MATTER OF VANGUARD NUMBER 1 LIMITED**  
**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

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

Date: 14 July 2025

**Before:**

**Deputy ICC Judge Baister**

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**Between:**

**WAYPARK COMMERCIAL MORTGAGE 1  
LIMITED**

**Applicant**

**- and -**

**VANGUARD NUMBER 1 LIMITED (IN  
LIQUIDATION)**

**Respondent**

**Mr Philip Currie (instructed by Farrer & Co) for the Applicant**  
**The Respondent did not appear and was not represented**

Hearing date: 4 July 2025  
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This judgment was handed down on 14 July 2025 at 9.30 am by email to counsel for the applicant and by subsequent release to the National Archives

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**Deputy ICC Judge Baister**

1. On 4 July 2025, on the urgent application of Waypark Commercial Mortgage 1 Limited, I made a declaration that the stay imposed by s 130(2) Insolvency Act 1986 did not apply to a sale of property by a secured creditor pursuant to a power of sale contained in a fixed legal charge/mortgage and that the stay imposed by that provision did not apply, in particular, to the sale by the applicant of a property known as Oak House, Bridgewater Road, Worcester WR4 9FP (registered under title number HW200709) pursuant to its powers of sale under a debenture dated 4 November 2022. I did so on the basis of submissions set out by Mr Currie, counsel for the applicant, in his helpful skeleton argument, which this judgment largely follows. The liquidators did not appear, having indicated that they did not wish to make any representations to the court.
2. In 2002 the respondent company granted a debenture to the applicant to secure its indebtedness to it. The debenture included a legal charge over Oak House. The applicant demanded payment and elected to exercise the power of sale provided for in the debenture. The company was wound up by the court on a petition presented by a different creditor. The solicitors acting for the purchaser of Oak House have expressed concern that s 130(2) might vitiate an effective sale by the applicant to their client. It is that concern that led to the application resulting in the declaratory relief summarised above.

3. Section 130(2) Insolvency Act 1986 provides:

“When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company or its property, except by leave of the court and subject to such terms as the court may impose.”

Mr Currie submits that the provision does not apply in this case because it is not an “action or proceeding.” Neither term is defined in the Insolvency Act, but there is case law which assists.

4. In support of the limited meaning to be given to the word “action” in the context of s 130(2) Mr Currie relies on *Financial Conduct Authority v Carillion plc* [2021] EWHC 2871 (Ch), [2022] Ch 162, in paragraph 38 of which Michael Green J noted that leading counsel for the company had accepted (and the judge appears to have agreed with her) that, by virtue of the historical context of its predecessor section in the Companies Act 1862, the term “action” in section 130(2) of the Insolvency Act had to refer to court proceedings against the company, so that “the FCA’s non-court regulatory action can only be within section 130(2) if it is a ‘proceeding’.” Thus, the question was “whether there should be a broad or more narrow interpretation of ‘proceeding’ in section 130(2).”
5. In paragraph 79 the judge set out his conclusion on that question, holding that:

“As explained in [*Bristol Airport plc v Powdrill* [1990] Ch 744, the scope of the word ‘proceeding’ is limited to ‘legal

proceedings or quasi-legal proceedings such as arbitration.’ Therefore any court proceedings, including criminal proceedings, are included. Non-court proceedings will only be within section 130(2) if they are similar to court proceedings having regard to the statutory purposes of section 130(2) as set out by David Richards LJ in [*Mortgage Debenture Ltd v Chapman* [2016] 1 WLR 3048.]”

6. As to the statutory purposes informing s 130(2), Michael Green J relied on and cited from the Court of Appeal judgment in *Mortgage Debenture Ltd v Chapman*:

“12. In the case of liquidation and bankruptcy, the purpose of these provisions is essentially twofold. First, given that the property of the company or individual stands under the statute to be realised and distributed, subject to any existing interests, among the creditors on a *pari passu* basis, the moratorium prevents any creditor from obtaining priority and thereby undermining the *pari passu* basis of distribution. Secondly, given that both a liquidation and bankruptcy contain provisions for the adjudication of claims by persons claiming to be creditors, the moratorium protects those procedures and prevents unnecessary and potentially expensive litigation. In circumstances where the potential liability of the company or bankrupt is best determined in ordinary legal proceedings, as for example is often the case with a personal injuries claim, the court will give permission for proceedings to be commenced or continued, but usually on terms that no judgment against the company or individual can be enforced against the assets of the estate.”

7. Whilst “proceeding” has been interpreted to include execution and distress (see paragraphs 65 and 79 of Michael Green J’s judgment), that is because those remedies are likely to have the effect of giving an advantage to creditors who avail themselves of them, thereby offending against the *pari passu* principle identified above. That, as Mr Currie points out, is not the case where a secured creditor seeks to exercise its power of sale. Secured property, and the proceeds of its sale, do not form part of the general pot available for *pari passu* distribution to the general body of creditors unless, of course, the security is impugned, which is not the case here. Thus, there would be no basis on which s 130(2) could prevent a sale in this case. That that is the position is also borne out by *Sowman v David Samuel Trust Ltd* [1978] 1 WLR 22 in which the court held that a compulsory winding up did not affect the powers of a receiver appointed under a debenture to dispose of company property subject to the charge.
8. I agree with Mr Currie’s submissions.
9. In the event that I had not, Mr Currie applied in the alternative for leave to sell. For the same reasons I have given above I would have granted leave, had it been necessary to do so. Mr Currie and I were of the view that an order in the alternative to that effect would not sit easily with the declaratory relief I had agreed to grant, as a result of which that is reflected not in the order itself but in a recital to it.

