Case No: 116 IQ of 2004

Neutral Citation Number: [2004] EWHC 2595 (Ch)
IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

29th October, 2004

B e f o r e :

THE HONOURABLE MR. JUSTICE BLACKBURNE

- - - - - - - - - - - - - - - - - - -

PAUL ANTHONY DAVIDSON — **Claimant**
- and -
PAUL STANLEY — **Defendant**

- - - - - - - - - - - - - - - - - - -

THE CLAIMANT appeared In Person.
MR. G. MAYNARD CONNOR for Messrs. Wacks Caller.
MR. D. LIGHTMAN (instructed by Messrs. Berg & Co.) for Oystertec.
MR. DREW, Solicitor, of Norton Rose.
THE RESPONDENT was not in attendance.

- - - - - - - - - - - - - - - - - - -

Approved Judgment

Tape Transcription by Marten Walsh Cherer Ltd.,
Midway House, 27/29 Cursitor Street, London EC4A 1LT.
Telephone No: 020 7405 5010. Fax No: 020 7405 5026

Mr. Justice Blackburne:

1. This is the adjourned hearing of an opposed application by Paul Anthony Davidson for an interim order under Section 252 of the Insolvency Act 1986. The application notice, which is dated 26 August of this year, was issued in the Macclesfield County Court, and was transferred to the High Court by the order of District Judge Beattie on 26 August.

2. The application then came before Ms. Registrar Derrett on 24 September when Mr. Davidson was represented by counsel. The Respondent to the application, Mr. Paul Stanley of the well-known firm of Begbies Traynor, is the nominee in relation to the proposed arrangement. He neither appeared, nor was represented at the hearing.

3. At the hearing, a firm of solicitors called Wacks Caller, who had previously represented Mr. Davidson in other proceedings, were represented. They opposed the making of an interim order, as did two other creditors. It was on that basis that the Registrar adjourned the application. In so doing, she directed Mr. Davidson by 4.00 p.m. on 8 October to file and serve upon all parties represented at the hearing before her further evidence in the form of a witness statement, addressing the terms of the proposal and specifically dealing with all concerns and other matters which had been raised by his creditors.

4. In declining to make an interim order at that hearing, the Registrar, I understand, indicated that she was concerned at the manner in which the proposal by Mr. Davidson had been formed, and expressed the view that there was insufficient evidence that there would be the recoveries claimed. She did not, however, dismiss the application there and then because she considered that as the creditors present at the hearing represented only a small part of Mr. Davidson's total creditors, that the creditors present had made serious allegations against Mr. Davidson, and that if the application was dismissed, he would be precluded by the terms of Section 255(1)(c) of the Act from making another application for an interim order for another twelve months Mr. Davidson should have the opportunity to put in further evidence. Hence the directions to which I have referred. Mr. Davidson has, since, served a further witness statement dated 7 October.

5. Before I come to his proposal, it is relevant to the exercise of the discretion which the Court has under Section 255(2) of the Act whether to make an interim order to consider, as briefly as I can relate it, some of the background.

6. A company called Oystertec is represented before me by Mr. Daniel Lightman and opposes the making of an interim order, is the claimant and Mr. Davidson the defendant to Part 20 proceedings in an action proceeding in this Division. The main claim was brought for the return of various patents, or for compensation in lieu of their return, claimed to have been improperly transferred to Oystertec by Mr. Davidson in breach of duty. The Part 20 claim was for damages and equitable compensation as well as other relief in respect of breaches of warranty contained in a certain agreement. It was claimed that Mr. Davidson had warranted and represented that he was the owner of certain patents when, as it was alleged, he well knew that there were claims to the patents by third parties, and that he had failed to make disclosure in relation to that.

7. An application was made by the claimants in those proceedings for summary judgment. The matter came before Mr. Peter Prescott, Q.C., sitting as a Judge of the High Court, on 8 September, and again on 7 November of last year. Mr. Prescott granted summary judgment against Mr. Davidson for breach of fiduciary duty

8. Mr. Davidson sought to appeal against the granting of summary judgment, but ultimately his appeal was dismissed.

9. In the meantime, by an order of Mr. Prescott made on 4 December, Mr. Davidson had been required to serve a witness statement by the middle of January of this year, setting out what he had obtained as a result of the purported assignment of a particular patent to Oystertec. But, despite that order, Mr. Davidson failed to serve the required affidavit. This was followed, towards the end of February of this year by Mr. Prescott granting the claimants a freezing order against Mr. Davidson, limited to the sum of £3 million. Three months later on 7 May, Mr. Davidson's defence to the claimants' other claims in the action was struck out.

10. On 29 January, in the Part 20 proceedings, Oystertec obtained a worldwide freezing order against Mr. Davidson, up to a sum of £1.5 million. The order contained an asset disclosure order and an order for the supply of tracing information.

11. That was followed on 3 February by the grant of summary judgment on Oystertec's claim against Mr. Davidson. The judge, again Mr. Prescott, held that Mr. Davidson had acted fraudulently in giving various warranties and in making representations as to title and as to the absence of claims relating to the patents transferred to Oystertec. Mr. Davidson was found either to have made the statements knowing them to be untrue, or recklessly, not caring whether they were true or false. As a consequence of that judgment, various declarations were granted. Equitable compensation was ordered to be assessed, and, in the meantime, Mr. Davidson was ordered to pay £750,000.

12. Unfortunately, Mr. Davidson did not comply with the disclosure provisions contained in the freezing order. He failed to serve a proper list of assets as required by the order. He failed to serve affidavits properly disclosing his assets or providing the tracing information which he had been ordered to supply.

13. On 18 February Oystertec applied for Mr. Davidson's committal in consequence of a claim that Mr. Davidson had disposed of assets in breach of the freezing order. On 26 March the matter came before Mr. Justice Patten who found that Mr. Davidson had acted in breach of the provisions of the freezing order. He held in the course of his Judgment that Mr. Davidson had provided "a schedule of assets which he must have known was completely inadequate".

14. Finding that the breaches of the freezing order were serious, Mr. Justice Patten awarded indemnity costs in Oystertec's favour, including a sum of £60,000 on account. He ordered that Mr. Davidson should provide a comprehensive statement of assets and disclosure in relation to a number of share sale transactions by 21 April. He made it clear that this was a final opportunity for Mr. Davidson to comply. Notwithstanding that warning, Mr. Davidson failed to do anything until 20 October - that is to say, until only a few days ago - to comply with Mr. Justice Patten's order.

15. In the meantime, in early August of this year, Mr. Justice Lightman heard applications by Oystertec for the appointment of a receiver by way of equitable execution, and for the discharge of its undertaking in damages given when it obtained the worldwide freezing order. At the same time, Mr. Davidson cross-applied for the discharge of that freezing order. In the result, Mr. Justice Lightman discharged Oystertec's undertaking in damages, appointed a receiver and manager for the purpose of collecting, getting in, receiving and realising shares, dividends and the like, and dismissed Mr. Davidson's application to discharge the freezing order. In addition, Mr. Davidson was ordered to pay Oystertec's costs of the applications which were summarily assessed in the sum of £19,650.

16. At para. 20 of his judgment Mr. Justice Lightman stated:

> "In my view, it is quite plain, and it was plain to Mr. Prescott, that Mr. Davidson is a man who is unwilling to fulfil his obligations under any order or judgment of the court. I would only add that still not a penny has been paid, and nothing has been done to comply with the judgment of Mr. Justice Patten".

17. The non-payment of anything in compliance with the orders of Mr. Prescott and Mr. Justice Patten remains the position; indeed, I understand that nothing has been paid towards the costs ordered to be paid by Mr. Davidson by the order of Mr. Justice Lightman.

18. It is against that background of other proceedings that on 31 August Mr. Davidson's former solicitors, Wacks Caller, who are represented before me by Mr. Maynard-Connor, presented a bankruptcy petition against him, based upon a debt of £148,000-odd, following non-compliance with a statutory demand dated 19 April. On 27 August Mr. Davidson had applied to set aside the statutory demand. That application was dismissed by District Judge Beattie in the Macclesfield County Court. The District Judge gave leave to Wacks Caller to present a petition on 31 August, but in the light of the application which Mr. Davidson had made the previous day for an interim order under Section 252, he directed that upon its presentation the petition should be stayed until further order. He ordered Mr. Davidson to pay Wacks Caller's costs, assessed at the sum of just under £5,500.

19. A few days before that, on 19 August, Mr. Davidson found himself the subject of a second application for committal at the instance of Oystertec, this time for failure to comply with Mr. Justice Patten's order of 26 March. That matter came before the court on 21 October. It stands adjourned to enable Mr. Davidson to file an affidavit giving the information and exhibiting the documents which Mr. Justice Patten ordered as far back as 26 March of this year.

20. So much by way of background.

21. Under Section 255(2) of the Act, the court has a discretion whether to make an interim order. The sub-section provides that the court may make an order if it thinks that it would be appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal. It is established by decided authority (see **Hook -v- Jewson Ltd.** [1997] 1 BCLC, 664) that in determining the appropriateness, or otherwise, of making an interim order the vourt will consider whether the debtor's proposal for his IVA to be put to his creditors is "serious and viable". In other words, the

court must be satisfied of the proposal's seriousness and **bona fides**, and therefore that there is substance in the application for an interim order because of the far-reaching effect which an order may have in staying proceedings by the debtors' creditors.

22. Relevant to the exercise of the discretion is whether, in his proposal, the debtor has made a full and correct disclosure of his affairs - in particular, his assets and the extent to which they are subject to encumbrances, and of his expected future earnings if, and insofar as, those earnings are to be relied upon as part of the benefits which are to be available to creditors under the arrangement.

23. Against that brief summary of the position inlaw, I come to the proposal. In section 3, concerned with the introduction and history of the matter, Mr. Davidson, who says that he is currently unemployed, intends, he says, to 'market several inventions which I have been considering'. He then refers briefly to the Oystertec proceedings. He refers to the problems that he has suffered as a result of the freezing orders, and says that as a result of various matters concerned with those proceedings, he has a claim against Addleshaws, who acted for him in relation to certain transactions which formed the basis of some of the claims in those proceedings, which he believes should result in recoveries of over £30 million.

24. Since making his proposal, Mr.Davidson's estimate of the likely fruits of this action has greatly increased because, in his second witness statement (dated 7 October), at para. 10, he says:

> "I have taken action against Addleshaw Goddards [as they are now known] to recover an amount in excess of £80 million on grounds of gross negligence".

25. He also refers in his proposal to an action claiming compensation which he intends bringing against the FSA. He says that the FSA fined him £750,000 for market abuse "despite me not being a regulated person and following no interviews with me". He anticipates that that claim will run into "tens of millions of pounds".

26. He then goes on to say that the basis of his proposal is that creditors will receive contributions from his surplus assets which include shares and investments, cash at bank, and what he describes as "a debt due from Vince Gray". He says he will co-operate fully with the supervisor in valuing the assets and signing any documents required to realise them. He then goes on:

> "Following valuations by the supervisor and the verification of the validity of charges over my residential home, my wife will purchase any equity in the home from me/the supervisor . . . I anticipate that the legal settlements [I think that must be a reference to the actions] referred to above will be available during Year 2. The legal actions against the FSA and Addleshaws will be run by me and funded by my wife. If successful, sufficient funds will be made available to the supervisor from the engaged solicitors to ensure all creditors receive a dividend of 100 pence in the pound . . . 30 percent of any income derived from new inventions will be paid to my supervisors. I anticipate that a minimum of £200,000 will be paid to the supervisor".

I should say that the period of the arrangement is envisaged as being two years. When I asked Mr. Davidson what the £200,000 related to, he gave me to understand that it

would be £200,000 per annum, and not as the creditors represented before me had understood - £200,000 in all over the period of the arrangement.

27. Mr. Davidson then says that the surplus from the sale of certain properties, which he lists, will be paid to the supervisor, following the settlement of a charge held by the Yorkshire Bank. Later in the proposal, however, he says that in relation to those same properties, a small surplus is anticipated, but, "this will be subject to the costs of the LPA receiver, and the calculation of final interests and charges of the secured creditor". He then says that what he describes as "windfalls" received during the arrangement period are included in the arrangement, and that he expects unsecured creditors to receive 100 pence in the pound, compared to an approximate 17 pence in the pound in the event that he is declared bankrupt.

28. He then refers to a statement of affairs comparing bankruptcy with the proposed voluntary arrangement, and says that it is his honest belief that a voluntary arrangement will facilitate a more expedient realisation of assets than in a bankruptcy, saying, "An arrangement is a more suitable procedure for dealing with my estate as it is more flexible and efficient that a formal bankruptcy", but then adding: "No recoveries will be made to creditors in the event of bankruptcy as my inventing income would be severely curtailed, and no funds would be available from the legal action [I think that must be a reference to the actions against Addleshaws and the FSA] as my wife would not be willing to fund the action".

29. He later refers to what are referred to as "shares and investments". He names four different investments. He refers to £260,000 cash at the bank, and refers again to his claims against Addleshaws and FSA. He says in relation to the claim against the FSA that "costs have already been awarded against the Government and the FSA in the sum of £1.3 million". On investigation this turns out to be something of an exaggeration. The order that I have seen provides for Mr. Davidson to receive half of his costs thrown away in connection with a particular hearing before the Financial Services & Markets Tribunal. Quite where the figure of £1.3 million comes from is not evident.

30. He also refers to owning a boat located in Spain, which he says is currently under extensive restoration, being funded by his wife. The extensive restoration is estimated to cost in the region of £500,000. He says that once the renovation work has been completed, "I consider that the boat will be valued in the region of £1.5 million. However, there are charges due to the boatyard in the region of £550,000". He puts a value of £500,000 on that boat, but I note from his statement of affairs, and from a list of exclusions from the arrangement, set out in para. 10, that the boat is not included. Indeed, Mr. Davidson confirmed to me that it would only be included "if we have to sell it".

31. He then refers to certain so-called cherished number plates, which are also excluded from the arrangement, and then to the sum of £30,000 said to be due from Mr. Vince Gray, which is included in the arrangement.

32. He estimates that his unsecured liabilities are of the order of £24 million - a figure which appears on the statement of affairs.

33. This application, as I have mentioned, is opposed. Represented before me are three creditors. The first is Wacks Caller, appearing, as I have mentioned, by Mr.

Maynard Connor. Wacks Caller the creditor petitioning for a bankruptcy order. Their claim currently stands, as I understand it, in the sum of just under £163,000. Then there is, as I have also mentioned, Oystertec, represented by Mr. Lightman. They have claims for costs which I understand to be of the order of £700,000. Also represented are Norton Rose, represented by Mr. Drew of that firm. They have a claim for costs in the sum of £860,000. All three of those creditors are opposed to the making of an interim order.

34. The viability of this proposal depends, of course, upon the worth of the various assets to which Mr. Davidson refers. A key part of the proposal is the prospect of £200,000 per annum income from his new inventions. Unfortunately, the proposal gives no details of what these inventions are. Despite Mr. Davidson being pressed for the information, there is no independent appraisal of what they are, and much less what they were worth. Mr. Davidson's assumption that these inventions will yield £700,000 per annum, of which, as I say, £200,000, being 30 percent-odd, is to go into the arrangement, is, as it seems to me, no more than assertion. The inventions have not yet been patented. Absolutely nothing is known about them.

35. As regards the claim against the FSA which is said by Mr. Davidson will yield 'tens of millions of pounds', it is not apparent what precisely the cause of action is which will yield such sums. I have seen no advice on the merits of the claim, and I therefore have no indication of the prospects of success, or what, if anything, may be forthcoming if the claim is pursued. My attention has been drawn to a very short opinion by counsel in which it is said that Mr Davidson has a 70 percent prospect of success, but that, as the opinion makes clear, is a prospect of his succeeding in an appeal against orders, or other relief, which the FSA has hitherto made against Mr. Davidson. The opinion does not deal with what, if any, claims he, Mr. Davidson, may have against the FSA, let alone what their prospects are.

36. So far as the claim against Addleshaw is concerned, which, as I have mentioned, Mr. Davidson believes should yield a sum of £80 million, I know very little about it beyond the fact that it is in negligence arising out of the handling of transactions by a Mr. Warburton of that firm. At the start of today's hearing, Mr. Davidson produced a letter dated 26 October from a firm of solicitors whom he has consulted in relation to this claim. On p.3 of the letter the solicitors say this, "On the basis of this evidence [and they refer earlier in the letter to a number of documents and witness statements, and the like] it is my opinion [this is Mr. Healey of that firm] that you have the basis of a case against Mr. Warburton and his former firm. Of course, as I know you will appreciate, that does not necessarily mean that at the end of the day you would succeed in Court".

That is hardly a ringing endorsement of a claim which Mr. Davidson believes will yield some £80 million. I should say that the schedule which he has produced which sets out how the £80 is arrived at consists of a catalogue of so-called 'lost development opportunities' and losses of equity in various properties, all to be assessed. I think it is best described as something of a wish list.

37. Mr. Davidson also intimated that he would wish to bring proceedings against Oystertec, arising out of what he says was the improper way in which Oystertec obtained its freezing order against him. I have to say that I find that somewhat surprising because Mr. Davidson has already attempted, unsuccessfully, before Mr. Justice Lightman to have that order set aside. This further action, it seems to me, would be a second bite at that cherry. I cannot, for my part attach any value to that proposed claim.

38. For some reason which is not apparent to me, the various shares and investments to which he refers are valued at £4.7 million for the purposes of the arrangement, but only £2.6 million if realised in the course of the bankruptcy. That point apart, there is no valuation before me to indicate how he reaches either figure. It is also difficult to attach any significant value to any surplus equity in the various dwellings and other properties to which his proposal refers. The boat, as I have mentioned, would appear to be excluded from the arrangement. But, over and above all of that, the viability of this proposal, as has been pointed out pre-supposes the willingness of Mrs Davidson to provide funding, in particular for one or both of the actions which Mr. Davidson hopes will yield many millions. I have seen nothing from Mrs. Davidson, and I know nothing about her financial position to indicate whether she has realistically the sort of resources that would be needed to finance these claims.

39. As I mentioned, the creditors represented before me are opposed to the making of any interim order. Mr. Davidson expresses confidence that 75 percent of his creditors will favour his proposal. One of the difficulties here is that I do not know who these creditors are. Although he refers to £24 million worth of creditors in his statement of affairs, he now tells me that that was a gross over-estimate, and that his creditors are, in truth, no more than £7 million. But, whether those other creditors are £17 million or so, or some much lesser figure, I have seen nothing in any of the documents to indicate that any of those other creditors will support this proposal.

40. Conspicuous by his absence on this application is the nominee, Mr. Stanley, who is, after all, the respondent to the application. In a letter dated 14 September to Wacks Caller, Mr. Stanley says this:

> "You will be aware that although Mr. Davidson has instructed me to act as nominee in respect of his proposals, I have not yet submitted a nominee's report on the proposals. This is because I took the unusual step of writing to creditors with the proposals Mr. Davidson had submitted to Court, to ask creditors for their comments on the information provided Mr. Davidson on his affairs, in particular relating to his assets and liabilities. I do not intend submitting the report until I receive full and frank answers to the questions which have been raised by creditors as to do otherwise would, I feel, put myself at a personal reputational risk which I am not prepared to take".

He then refers to the inventions and says,

> "Mr. Davidson has not disclosed to me the precise nature of the inventions on which he has been working, despite requests for him to do so".

He then refers to the proposed action against the FST and says that:

> "Mr Davidson believes that his claims run into tens of millions, although I have not seen any quantification of the sums in precise terms".

He says in relation to the claim against Addleshaws that he has passed a letter from Wacks Caller to Mr. Davidson for his comments. He says he has seen no formal valuations in respect of the various items of real property. He says he has written to Mr. Davidson and informed him of a certain deadline "and obviously if he responds to me, I will let you have the various information that Wacks Caller has requested".

That appears to be the last matter of any relevance that Mr. Stanley has communicated.

41. There is no report. Mr. Stanley is not before me. Mr. Davidson is under the impression that Mr. Stanley is away on holiday, and is unaware of this application. I find that hard to believe. I would have thought that if he had been on holiday, there would have been something before the Court, apologising for his absence. But, there is nothing. As Mr. Maynard Connor said, Mr. Stanley's absence speaks volumes.

42. As to whether this proposal is serious and viable, in my judgment the answer is, no, it is not. Indeed, in my judgment, it is an essay in make-believe. I am not therefore willing to make the order sought. Relevant to this is, as Mr. Justice Lloyd pointed out in **Fletcher -v- Voigt** [2000] BPIR, 435, that one of the reasons for the Court having a discretion under Section 255 is to act as a filter to avoid what Mr. Justice Lloyd refers to as the unnecessary and wasteful convening of creditors' meetings if the proposal is one which is neither serious nor viable. As he points out, the consideration of a proposal by creditors involves time, effort, and expense. If therefore the court's view is that the proposal is neither serious nor viable, it is not right that the creditors should be exposed to the cost and expense of a meeting.

43. There are other factors which weigh with me in coming to this conclusion. As my recital of the background events makes clear, Mr. Davidson, unfortunately, is somebody who has persistently failed in other proceedings, and despite orders of the Court, to make full and frank disclosure of his financial affairs. Such conduct, as it seems to me, augurs badly for the success of a proposal of this nature. Moreover, Mr. Davidson has been found in those other proceedings to be dishonest and indifferent to his obligations to the courts. I also have a strong sense that part of the motivation for this proposal is to delay the making of a bankruptcy order and possibly also to inhibit the further prosecution of the proceedings currently being brought against him by Oystertec.

44. In the circumstances, I dismiss the application.

_____