
INSOLVENCY BULLETIN

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TUVS, SET-OFFS AND THE GREAT GATSBY

AFM (1932) Ltd (“AFM”) was a construction business which entered into compulsory liquidation in 2014.

AFM’s joint liquidators discovered that prior to entering into liquidation £361,528 had been paid by AFM to third parties, in order to carry out works on a sizeable property in Essex owned by Belisco Estates Limited (“BEL”), a BVI registered entity. AFM did not receive any payments in return for the work that was completed.

In *AFM (1932) Ltd & Ors v Belisco Estates Ltd & Anor [2021] EWHC 3460 (Ch)* the Insolvency and Companies Court was asked to determine whether payments made by AFM, from which BEL received a clear benefit, were transactions at an undervalue under s238 of the Insolvency Act 1986.

BEL argued that set-offs should be taken into account due to:

- 1) complex contractual arrangements between AFM and other companies connected to BEL for payment by AFM of £250,000;
- 2) BEL had discharged liabilities owed by AFM to third parties totalling £363,338.

In assessing the evidence the Court made reference to “The Great Gatsby” in that *“nothing is as it seems”*.

As regards the first claimed set-off of £250,000, the Court held that there was no consideration and therefore no obligation within the complex contractual arrangements for AFM to have paid it. As regards the second claimed set-off of £363,338, the Court held that AFM could have sought reimbursement for the monies it had advanced for works completed at BEL’s property. However, even if AFM was not entitled to reimbursement, then any payment to AFM’s creditors would result in BEL standing in the shoes of those creditors.

The Court referred to Rule 14.25 of the Insolvency Rules 2016, stating that *“mutual dealings”* meant *“mutual credits, mutual debts, or other mutual dealings. Claims are only mutual dealings if they are due between the same parties and in the same rights and there must have been dealings between them...all that has happened is that BEL has paid what are ultimately its own liabilities”*.

Editor’s Note

Following receipt of the Court’s draft judgment, the parties were able to resolve matters and a draft Consent Order was submitted for approval. The Court nevertheless decided to hand down the judgment, irrespective of the settlement, and considered that it was right for its decision to be a matter of public record. This was for the creditors of AFM to be aware of the findings of fact *“and in case other problems arise from the scenario of events where things were not as they seemed.”*



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