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# INSOLVENCY BULLETIN

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## **GOOD NEWS FOR OFFICE HOLDERS AND ASSIGNEES**

In August 2014 the director shareholders of PGD Limited (“the Company”) elected to sell their shares. The purchase of those shares was facilitated by funding from the Company. The directors also cleared their overdrawn directors’ loan accounts by utilising the funds they received for their shares. By August 2015 each of the directors had been paid £393,819 by the Company. The Company entered compulsory liquidation in April 2016.

As there were no funds in the liquidation, Manolete Partners Plc (“Manolete”) were assigned the rights to all of the Liquidator’s claims. Manolete and the Liquidator agreed an initial payment by Manolete to the insolvent estate of £20,000, 50% of any net recoveries received up to £250,000 and 60% of any net recoveries received over £250,000.

In November 2021 the Insolvency and Companies Court gave judgment in favour of Manolete but also handed down a supplemental judgment with a proviso (“the Proviso”) that total recoveries “...shall not exceed the amount required to pay off all liquidation debts, fees, remuneration and expenses, together with applicable interest, in full and without return being made to the Members of the Company as such”.

The Court was concerned that there should be no distribution to the shareholders i.e. the purchasers of the shares. However the Proviso also meant there was potential to limit the money payable to Manolete.

The directors subsequently declared themselves bankrupt and an appeal solely concerned with establishing Manolete’s claims *PGD Limited (in liquidation); Manolete Partners Plc v Hope and Anor [2022] EWHC 1801(Ch)*, considered whether the Proviso should stand.

The situation was described by the superior Court as possibly academic, given that HMRC had proved a claim in the liquidation for £1,308,728 and the lower Court made a judgment of £1,204,197 in Manolete’s favour. The limits referred to in the Proviso would not be engaged in this instance and the directors’ bankruptcies also meant that recoveries would be limited as well. However, the Court acknowledged that the points raised by the Proviso were important in a wider context to Manolete and other potential assignees of claims as well.

Manolete argued that the lower Court had no authority to make the Proviso. Reference was made to a number of cases where the recoveries had been limited but the common theme was that these were s212 Insolvency Act 1986 misfeasance cases where there was an element of misconduct attached to such claims and restrictions were imposed to avoid an unmerited windfall to shareholders. S212 was not a claim in this instance. The Appeal Judge considered that the Proviso prejudiced the interests of Manolete, which was innocent of wrongdoing, as were creditors who might also be prejudiced. It would be wrong to deprive an innocent assignee of proceeds due to it because of a legal doctrine designed to stop misfeasant director/shareholders from receiving a benefit. In any event, the price of the assignment was the obtaining of a result for the insolvent estate which allowed a proportion of the recoveries to be retained by the assignee.

### **Editor’s note**

This decision is to be welcomed in providing reassurance to office-holders and also assignees operating in a burgeoning market.



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