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AN INTERESTING DECISION ON POST- PETITION DISPOSITIONS

When a company is threatened with compulsory liquidation as a consequence of the presentation of a winding-up petition, it is vital under the *pari passu* principle that creditors are treated equally and that a company's assets are not dissipated. That principle underpins s127 of the Insolvency Act 1986 which states that any disposition of company property, transfer of shares, or alteration in a company's membership are void, unless otherwise ordered by the Court.

Any transactions needing to be made "post-petition" will require a validation order from the Court. If a transaction results in the reduction of assets available to creditors it will not be validated. However, where the transaction does not affect creditors and improves a company's financial position, the application for validation should be successful.

Without a validation order post-petition payments may be challenged and in *Re Changtel Solutions UK Ltd (in liquidation) [2022] EWHC 694 (Ch)*, the Liquidators claimed that unvalidated payments of £47,053 made after the presentation of a winding-up petition on 7 June 2013 were in breach of s127 and void. The Respondent ran five defences.

First, that it was a pre-petition disposition as the cheque had been supplied by the Company prior to the presentation of the petition but paid several days afterwards. The Court held that this was a post-petition transaction as the disposition took place at the date of payment.



Secondly, the Respondent argued that the s127 application was time-barred under s9 of the Limitation Act 1980. The Court held that the six year time limit in which to issue proceedings ran from the date of the winding up order; not from the date of each disposition.

Thirdly, the Respondent argued "special circumstances". The Court found that post-petition payments made over 7 months in respect of security guards at the Company premises at a time when the Company was loss-making did not constitute "special circumstances" as there was no benefit for creditors.

Fourthly, the Respondent argued that there were "exceptional circumstances" as the Respondent was unaware of the petition and nor had it been advertised. The Court rejected this argument as there was no statutory "carve-out" for these items.

Fifthly, the Respondent argued "change of position". The Court held that this defence could only apply in circumstances where validation would have been ordered.

Editor's Note

This judgment supports earlier authorities that a "change of position" defence is not a stand alone defence but must be argued in conjunction with "special circumstances" or "exceptional circumstances". Practitioners will note that the key ingredient to obtaining a validation order continues to be that the dispositions must benefit the general body of unsecured creditors.

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