

When the appointment of a conflict liquidator may be appropriate (Re Microcredit Ltd v Rosler)

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Restructuring & Insolvency analysis: In rejecting claims of apparent bias the judge found there were insufficient ground to justify the removal of a liquidator. However, the appointment of an additional liquidator was warranted for the limited purpose of considering dispassionately the prospects of an appeal against one creditor's claim in the liquidation. Written by Chris Brockman, barrister at Enterprise Chambers.

Re Microcredit Ltd; Microcredit Ltd (Malta) v Rosler (as liquidator of Microcredit Ltd) [\[2021\] EWHC 1627 \(Ch\)](#)

What are the practical implications of this case?

While a court can remove an insolvency office-holder, it will only do so where it is shown that it is, on the whole, desirable that the liquidator should be removed and it is in the interests of creditors to do so.

If circumstances can be managed by the appointment of a conflict liquidator, then the court may adopt that route.

What was the background?

Microcredit was a pay day lender which exited the market in 2014 following an investigation by the Financial Conduct Authority. Shortly before it ceased trading and six months before it entered liquidation it transferred the right to receive the benefit of its outstanding loan book to a company incorporated in Malta with the same name. This was not disclosed to the official receiver, the liquidator nor to HMRC.

Following the making of a winding-up order, the liquidator of a company submitted a terminal loss claim (TLR) to HMRC resulting in a refund of tax. He was unaware of the Malta transfer when the TLR claim was submitted which was based on limited documentation made available to the liquidator by the director.

Following his investigations, the liquidator became concerned that the accounts on which the TLR claim was based were inaccurate. He contacted HMRC to raise his concerns about the TLR claim in that the accounts appeared to write off loans which the company had not made. The liquidator also brought a claim against the Maltese company and the director of the company in liquidation and obtained a freezing order in that action.

It was alleged that he improperly pressured HMRC into withdrawing the TLR claim and to issue assessments in the sum of £2.3m.

As such it was alleged that he was too close to HMRC and the appearance of bias meant that he was not in a position to decide whether the assessments should be appealed and should be replaced to enable a fresh liquidator to pursue an appeal.

There were also arguments about the merits of any appeal and the judge found that each side had tenable and bona fide reasons to believe that an appeal would succeed or fail, as the case may be.

What did the court decide?

The judge rejected the argument that the appearance of apparent bias was to justify the removal of the liquidator and adopted the earlier finding in associated litigation that the applicant had fallen far short of demonstrating misconduct, let alone dishonesty.

However, the appointment of an additional liquidator was warranted for the limited purpose of considering dispassionately the prospects of an appeal against HMRC's claim in the liquidation where the applicant had offered during the hearing to fund the costs of a conflict liquidator, including an adequate indemnity for any adverse costs of an appeal.

In those circumstances a conflict liquidator was appointed.

Case details

- Court: Business and Property Courts of England and Wales, Insolvency & Companies List (ChD)
- Judge: Deputy Insolvency and Companies Court Judge Baister
- Date of judgment: 2 June 2021

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