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PRACTICE AREAS

Insolvency & Restructuring

Company Directors Disqualification

PROFILE

Chris practices in all areas of personal and commercial insolvency. He has been consistently ranked in band 1 in Chambers UK directory for many years including for his “*fantastic client supportiveness*” and for his combination of “*intellect and commercially savvy common sense*.” He is further “*particularly praised for his flexibility and responsiveness*.” One source adds “*Nothing is ever too much trouble for him*.” He is viewed as an “*innovative thinker and always thoroughly prepared*.” Legal 500 2021 said of him “*Chris is very knowledgeable in his sector (Insolvency), hugely focused on the matter before him considering every angle and when on his feet in Court, he is very impressive. He is also a thoroughly*

nice chap who builds a very good rapport with client and solicitor."

His practice areas include asset recovery on behalf of insolvency office holders, opposing and obtaining administration orders; compulsory winding up; wrongful trading/breach of directors' duties claims; 236 applications to examine directors and examination of directors; defending trustees against claims for negligence/breach of duty; Bankruptcy Restriction Orders. He acts for the Secretary of State on various applications, including Company Directors Disqualification proceedings and public interest petitions.

Over the last few years he has developed a particular speciality in interim applications, including freezing and proprietary orders and summary judgment applications.

In the recent past Chris had been involved in numerous high profile personal and corporate insolvency cases and is frequently instructed by HMRC in relation to complex applications including on provisional liquidations. He has also successfully defeated challenges to several, and obtained personal cost orders against the directors.

Chris is an accredited mediator helping to resolve insolvency related disputes.

He is also an expert in the inter-relation of criminal law and the civil insolvency regime.

Christopher is a member of the Insolvency Lawyers' Association and he is also a CEDR Accredited Mediator. He has spoken at numerous courses and conferences. He is a contributor to Lexis Nexis PSL (insolvency module) and Gore-Browne on Companies as well as the author of numerous insolvency related articles.

PRACTICE AREAS

Insolvency & Restructuring

Chris's practice includes all aspects of company, LLP, partnership and individual insolvency. His experience ranges from applications to set aside statutory demands, bankruptcy petitions, administration applications, through clawback proceedings (misfeasance, TUV, preferences, s.423 IA 1986), unlawful dividends and distributions, CVA/IVA voting appeals/revocation/unfair prejudice applications. He is a specialist in interim applications, in particular provisional liquidations and freezing orders.

Company Directors Disqualification

Chris is Junior Counsel to the Crown Regional A Panel and appears for the Secretary of State/Official Receiver on disqualification applications.

In addition, he has acted for many directors in disqualification proceedings, and on s.17 CDDA permission applications for leave to act as a director.

SIGNIFICANT CASES

Manning and Gunn v Neste AB and Farah [2022]
EWHC 2578 (Ch)

the High Court had, for the first time, to decide whether shares were capable of constituting consideration for the purposes of s.245 IA 1986. The question arose when an unsecured creditor challenged the validity of a floating charge executed by a holding company to secure the vendors for the purchase price of shares acquired by the company. The section provides that consideration should only be recognised for this purpose to the extent that it constitutes “money paid, or goods or services supplied”. One of the questions which arose was whether shares fell into either of the s.245 IA 1986 valid security categories.

Umbrella Care Ltd v Nisa & Ors. [2022]
EWHC 86 (Ch)

Acting for the liquidators on a summary judgment application arising from a multimillion pound labour supply fraud committed by an umbrella payroll company, which deducted VAT, PAY and NICs and then submitted false returns to conceal the true position. The directors then extracted substantial sums from the company which should have been paid over to HMRC. HMRC’s claim in the liquidation totals about £36 million. Some of the money was traced into bank accounts and some used to acquire numerous properties through a network of companies. At the outset the Company obtained freezing and proprietary orders. The Company sought summary judgment against some of the Defendants arising out of its claims for breach of fiduciary duty, dishonest assistance and knowing receipt. Following a two-day hearing the Judge ruled in favour of the Claimant and found that there was no real prospect of the Defendants successfully defending the breach of duty and knowing receipt claims. He ordered judgment with damages/equitable compensation to be assessed and substantial interim payments. The court also made declarations that 19 properties and a bank account held in the name of the Defendants were held on constructive trust for the Claimant and made an order requiring the bank to pay the money direct to the Claimant.

Re Aronex Developments Limited [2021]
EWHC 2807 (Ch)

On an application by a liquidator the court held that it was just and equitable that the costs incurred by company liquidators in identifying, preserving and realising the interests of purchasers who had paid reservation fees and substantial deposits for units in unbuilt student accommodation be deducted from the proceeds of sale before they were divided between the company and the purchasers under the jurisdiction in *Berkeley Applegate (Investment Consultants) Ltd (No.3), Re (1989) 5 B.C.C. 803*.

Microcredit Ltd v Rosler [2021]
EWHC 1627 (Ch)

Acting for the liquidator of Microcredit Limited. The court held that there was an insufficient basis justifying his removal 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.

Nicholson v Hardy aka Re Jeb Recoveries LLP [2021]
EWHC 1311 (Ch)

Successfully applying to strike out a claim brought against the liquidator of an LLP on the grounds that the application failed to disclose reasonable grounds for bringing a claim, were incapable of being cured by amendment and the proceedings were an abuse of process.

HMRC v Rhino Television and Media Limited [2020]
EWHC 364 (Ch)

Acting for HMRC on an application to set aside a freezing order. The interim injunction granted to HMRC to prevent dissipation of a sum said to be owed by the respondent company under a VAT assessment was continued where there was no real prospect of the respondent showing that there was no VAT debt due at the date of HMRC's without notice application for the injunction. As a public authority, HMRC was not required to give a cross-undertaking in damages.

HMRC v Malde [2020]
EWHC 100 (Ch)

Acting for HMRC. Despite a significant delay in making the application, an order for further disclosure was granted to ensure the ongoing compliance with a freezing order where a defendant had not provided an adequate explanation for discrepancies in bank account balances or for his failure to provide bank statements. Privilege against self-incrimination was not available to the defendant in relation to the documents to be disclosed.

Michael Wilson & Partners Limited v Louise Brittain, Nicholas Parsk (as Joint Liquidators of Gbm Minerals Engineering Consultants Limited) [2020]
EWHC 3572 (Ch)

Acting for liquidators on an application to remove them and successfully obtaining an order for security for costs against a BVI registered company trading in Kazakhstan.

Re Total Site Projects Ltd [2019]
EWHC 586 (Ch)

A temporary work agency which operated in the construction industry knew or should have known that its transactions with a contracting intermediary were connected with VAT fraud. A winding-up petition against the agency based on a VAT assessment disallowing input tax on grounds of missing trader fraud was allowed to proceed since there was no genuine dispute about a significant part of the debt.

Revenue and Customs Commissioners v Malde [2019]
EWHC 908 (Ch)

The court varied a freezing injunction to allow an individual to spend up to £1.26 million on the refurbishment of his family home. The amount sought was appropriate and it could not be said that using the money for that purpose depleted the asset to creditors.

(1) Francis Wessley (2) Peter Hughes-Holland (Joint Liquidators of Laishley Ltd, in Liquidation) v Richard White [2018] EWHC 1499 (Ch) [2019]
BCC 289

The managing director of a company had not breached his fiduciary duties to the company under the Companies Act 2006 s.171 and s.172 where he had honestly believed that a novation of the company's contracts would be in the interests of everyone, including its creditors, and he had genuinely, but mistakenly, considered, on the advice of trusted professionals, that signing deeds of release would be the first step in obtaining those novations.

Pearse v Revenue and Customs Commissioners [2018]
EWHC 3422 (Ch)

A judge had been correct to refuse a debtor's application to set aside a statutory demand which relied on a judgment obtained by the creditor, the judgment having been based on the debtor's liability under a guarantee. Properly construed, the guarantee prevented the creditor from serving a statutory demand to recover the debt due under the guarantee without first obtaining a judgment; it did not prevent the creditor from taking that step once a judgment had been obtained.

Revenue & Customs Commissioners v Malde [2018]
EWHC 1381 (Ch)

The court refused to discharge a freezing injunction granted to HMRC against an individual who, through his company, had allegedly evaded VAT and excise duty. If material relating to the liability of a predecessor company, allegedly not disclosed to the judge, had been at the hearing it would have made no difference to the decision. Other alleged non-disclosure was an attempt to undo a serious and protective measure by trawling through material years later. Any delay could not be blamed on HMRC.

Re Rathore (In Bankruptcy) [2018]
B.P.I.R. 501

Where a bankrupt had entered into transactions at an undervalue in the form of gifts of shares to his wife, the appropriate relief was to vest the shares in the trustees in bankruptcy and order the wife to pay a sum equivalent to the dividends that she had received. The primary relief sought by the trustees, namely the value of the shares when they were transferred, would represent over-compensation for the bankrupt's estate.

Iain Paul Barker v Pual Baxendale-Walker [2018]

EWHC 2518 STI 1585 [2018], BPIR 1243 [2018]

S.T.I. 1585 Under the Insolvency (England and Wales) Rules 2016 r.10.24(2) a bankruptcy petition could be stayed or dismissed where "an appeal is pending" from the judgment debt on which the petition was based. An application for permission to appeal was not a "pending appeal", and the court had no jurisdiction under r.10.24(2) to stay or dismiss the petition unless permission to appeal had been given, or where no permission was required.

Iain Paul Barker v Pual Baxendale-Walker [2018]

EWHC 2518 EWHC 2518 (Ch)

The court may appoint specific individuals as trustees in bankruptcy upon the making of a bankruptcy order pursuant to the court's inherent jurisdiction, or alternatively pursuant to its power under s.363 of the Insolvency Act 1986.

Safe Business Solutions Ltd (in liquidation) v Cohen and another [2017]

EWHC 145 (Ch); [2017] All ER (D) 82 (Feb)

The Companies Court granted the applicant company an order, under para 43 of Sch B1 IA 1986, to commence legal proceedings against 727 companies in administration.

Aidiniantz v Sherlock Holmes International Society Ltd and another [2017]

EWCA Civ 1875; [2018] BCC 110

The Court of Appeal upheld the first instance decision that the appellant had ceased to be a director of the Respondent at the relevant time. Accordingly, the Respondent had no directors and could not have given instructions for its further participation in an appeal against a winding up order.

Ball (liquidator of PV Solar Solutions Ltd) and another v Hughes and another [2017]

EWHC 3228 [2018] B.C.C. 196 | [2018] 1 B.C.L.C. 58 | [2018]

B.P.I.R. 561 Application under s. 212 IA 1986 following the respondent directors wrongfully causing their directors' loan accounts to be credited.

Re Sherlock Holmes International Society Sub Nom John Aidiantz (Petitioner) v Sherlock Holmes

International Society Ltd (Respondent) & (1) Stephen Riley (2) Jennifer Decoteau (3) Pinder Reaux & Associates (Costs Respondents) [2016]

4 WLR 173 : [2016] PNLR 31

A claim for breach of warranty of authority brought against a company's firm of solicitors was not made out where the solicitors had ostensible authority to act for the company.

Andrew Philip Wood v (1) Jeremy John Paul Priestley (2) John Russell [2016]

EWHC 2986 (Ch)

The commercial purpose of a clause in a partnership agreement providing an indemnity to a salaried insolvency practitioner was to protect him against claims against the partnership for which he might be liable as a salaried partner, not to protect him against claims made personally against him.

Winnington Networks Communications Ltd V Revenue & Customs Commissioners [2015] STI 1628

BCC 554

Company directors failed to show that they genuinely believed that the company had a good defence to a winding-up petition or that it was in the company's interests to defend the petition. They were ordered to pay personally the petitioning creditor's costs of the petition and the costs of the company's unsuccessful defence.

Re The Sherlock Holmes International Society Ltd [2015]

BPIR 1329

On an appeal by a company for against a winding up order security for costs will not automatically be ordered.

Revenue and Customs Commissioners v Munir and others [2015]

All ER (D) 133 (May)

The court jailed 3 company directors for 6 months where they had paid away company funds immediately after the appointment of provisional liquidators.

Re Micra Contracts Ltd (in liquidation) [2015] [2016]

BCC 153

Acting for the liquidator of a company on a misfeasance claim in successfully obtaining judgment against 3 directors.

Winnington Networks Communications Ltd V Revenue & Customs Commissioners [2015] STI 1628
BCC 554

Company directors failed to show that they genuinely believed that the company had a good defence to a winding-up petition or that it was in the company's interests to defend the petition. They were ordered to pay personally the petitioning creditor's costs of the petition and the costs of the company's unsuccessful defence.

Parkwell Investments Ltd, Re; Parkwell Investments Ltd v Wilson [2015]
Bus LR 40, 164 NLJ 7634 and [2015] BPIR 74

An appeal to the FTT by a taxpayer does not oust the jurisdiction of the court to decide whether a petition debt is genuinely disputed.

Re France (A Bankrupt) [2014]
BPIR 1448

The Court analysed the use to which information obtained on a search and seizure order could be put.

Hellard & Another (as Trustees in Bankruptcy of Shahrokh Mireskandari) v (1) Chadwick (as Trustee in Bankruptcy of Mehrdad Jami Tehrani) & (2) Shelley Jami Tehrani [2014]
BPIR 163

Registrar Barber held that a transaction at an undervalue claim against Mr Tehrani's estate was a claim which was a provable debt in his bankruptcy and granted a stay of the proceedings both against his estate and Mrs Tehrani as a subsequent recipient. This was upheld on appeal [2014] BPIR 1234.

Re Chawda (In Bankruptcy) [2014]
BPIR 49

A non-bankrupt wife was not entitled to assert the equity of exoneration where it would be artificial to allow her to take the benefits while simultaneously seeking to enforce the right of exoneration to his disadvantage.

HM Revenue & Customs Commissioners v Winnington Networks Ltd & another company [2014]
All ER (D) 207 (May)

In granting without notice applications for the appointment of provisional liquidators in relation to companies suspected of fraudulent trading, the court summarised the relevant principles to be taken into account.

HM Revenue & Customs Commissioners v SED Essex Ltd & another [2013]

All ER (D) 78 (Nov)

Following an application to set aside an order appointing provisional liquidators the Court made a personal costs order against the director.

Re SED Essex Ltd - [2013]

All ER (D) 151 (Jun)

Successfully defeating a challenge to the appointment of provisional liquidators.

Chapper v Jackson [2012]

BPIR 257

Successfully defending trustee in bankruptcy in a negligence action.

Autoquake Ltd v Car Care Plan Ltd [2012] EWHC 1344 (Ch);

All ER (D) 194 (Feb)

Directions about valuing 5,000 warranty claims in an administration.

CAREER AND ASSOCIATIONS

Insolvency Lawyers Association

R3

Chancery Bar Association

Accredited Mediator

PUBLICATIONS

Pending application to appeal is insufficient to prevent a bankruptcy order being made.

Honest mistake by director does not lead to finding of misfeasance

Gore-Browne on Companies
Lexis Nexis PSL (insolvency module)
Modern Law of Meetings (3rd ed.)



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