Appendix E

Rule 2.112

Form 2.31B

2.31B

The Insolvency Act 1986

Notice of extension of period of administration

Name of Company	Company number
Groundwork Community Forests North East Development Limited	03327239

In the	Court case number
Leeds District Registry (formerly Durham County Court) (full name of court)	1680 of 2009 (formerly 40 of 2008)

(a) Insert full name(s) and address(es) of administrator(s)

I/We (a)
John Twizell
Geoffrey Martin & Co
St Andrew House
119-121 The Headrow
Leeds
LS1 5JW

Geoffrey Martin
Geoffrey Martin & Co
St Andrew House
119-121 The Headrow
Leeds
LS1 5JW

(b) Insert name and address of registered office of company

having been appointed administrator(s) of (b) Groundwork Community Forests North East Development Limited St Andrew House 119-121 The Headrow Leeds LS1 5JW ('the company')

(c) Insert date of appointment

on (c) 27th November 2008

(d) Insert name of appointor/applicant

by (d) the directors of the Company

hereby give notice that the administration has been extended:

(e) Insert date

by order of the court
until (e) 26 November 2010

Signed

Joint / Administrator(s)

Dated 30 November 2009

Contact Details:

You do not have to give any contact information in the box opposite but if you do, it will help Companies House to contact you if there is a query on the form.

John Twizell
Geoffrey Martin & Co
St Andrew House
119-121 The Headrow
Leeds
LS1 5JW

DX Number

0113 2445141
DX Exchange

The contact information that you give will be visible to searchers of the public record

When you have completed and signed this form, please send it to the Registrar of Companies at:-
Companies House, Crown Way, Cardiff CF14 3UZ DX 33050 Cardiff

THURSDAY

PRXAVG20

PC1 24/12/2009 982
COMPANIES HOUSE

Neutral Citation Number: [2009] EWCA Civ 1192

Case No: A3/2009/1938

IN THE HIGH COURT OF JUSTICE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM LEEDS DISTRICY REGISTRY
HIS HONOUR JUDGE BERENS
(Sitting as a High Court Judge)
16800F2009

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 November 2009

Before :

THE CHANCELLOR OF THE HIGH COURT
LORD JUSTICE LONGMORE
and
SIR JOHN CHADWICK

Between :

TWIZELL & ANR	**Respondents**
- and -	
ENTRUST & ORS	**Appellants**

MR HUGH JORY (instructed by Gordons Solicitors LLP, Leeds) for the Respondents
MR STEPHEN TROMANS QC (instructed by Pannone Solicitors LLP, Manchester) for the Appellants

Hearing date : 3 November 2009

APPROVED JUDGMENT

The Chancellor:

Introduction

1. Landfill Tax was introduced by Finance Act 1996. It is charged in respect of a taxable disposal, as defined in s.40, on the landfill site operator at a rate per tonne of the material disposed of as waste. The landfill site operator may obtain a credit against the amount of landfill tax for which he is liable by paying money to an environmental body and on the conditions laid down in regulations made under s.53. Those regulations are contained in Part VII of the Landfill Tax Regulations 1996/1527 as amended from time to time, to which I shall refer in detail in due course. I shall refer to the scheme constituted by that part of the Finance Act and Regulations as "the Environment Credit Scheme".

2. One such environmental body was Groundwork Community Forests North East Developments Ltd ("the Company"). It was incorporated as a company limited by guarantee on 26th February 1997 for environment protection purposes. In due course it acquired 4 sites, in the case of three of them with grants made to it by other environmental bodies including the second, third and fourth defendants, The Veolia Environmental Trust, CDENT and Thompson of Prudhoe Environmental Trust. Those environmental bodies had been funded by landfill site operators who thereby obtained credits against their landfill tax liabilities.

3. In July 2008 the Company acquired North East Community Forests (Charity) Ltd. It was in financial difficulties and the attempts of the Company to rescue it and its own subsidiary North East Community Forests (Trading) Ltd led to the insolvency of the Company. On 27th November 2008 all three companies went into administration. The applicants and respondents to this appeal, Mr Twizell and Mr Martin, both of whom are licensed insolvency practitioners, were appointed the administrators. The administrators formulated proposals for the sale of all four sites and convened a meeting of creditors to approve them, which they did, on 3rd February 2009.

4. In the meantime the first defendant and appellant, Entrust, the regulatory body approved by HMRC to oversee the Environment Credit Scheme, wrote to the administrators on 30th January 2009 suggesting that the grants received by the Company must have been used for purposes not authorised by the Regulations and that the matter would be referred to HMRC for consideration of actions to recover the money from the relevant landfill site operators. The administrators met representatives of Entrust on 26th March 2009 and understood them to agree that the sale of the 4 sites should proceed on the basis that the proceeds would not be distributed until the proper recipient had been ascertained. The administrators undertook a marketing campaign and received final offers on 29th May 2009. They remained concerned whether the costs of the sales and their own remuneration would be proper costs in the administration and payable out of the proceeds of sale.

5. Accordingly on 11th June 2009 the administrators applied to the court for an order that their remuneration, in such amount as the court considered just, should be paid out of the proceeds of sale whether they were assets of the company or held on trust for the company or any of the respondents. The respondents were Entrust, the three

environmental bodies I have mentioned and ICI Chemicals & Polymers Ltd which had funded the acquisition by the Company of the fourth site. Such an order was made by HH Judge Langan QC on 26th June but with liberty to any respondent to apply to discharge it. Such an application was made by CDENT, but no other respondent, on 10th July. It sought orders effectively denying any remuneration to the administrators and precluding the sale of one of the 4 sites. In the light of that claim the administrators made a cross-application seeking directions whether to exchange contracts for the sale of the 4 sites and authorising the payment of their remuneration.

6. Those applications came before HH Judge Behrens on 21st August 2009. CDENT was the only respondent to appear. Having heard argument from counsel for the administrators and for CDENT the judge concluded, for reasons which I will explain in more detail later, that the administrators' proposals did not involve any breach of the Regulations. In those circumstances he authorised the sale of one of the sites and declared that the proceeds of its sale were not held in trust for CDENT but were an asset of the Company. The rest of the administrators' application was adjourned. He gave permission to appeal to Entrust, which had not appeared before him, and to CDENT which had.

7. An appellant's notice was issued by Entrust, but not by CDENT. It asked this court to set aside both the authority for the sale and the declaration as to the status of the proceeds. Entrust is neither a creditor, actual, prospective or contingent, nor a contributory of the Company. Nor is it an intervener as there is no other appeal in which to intervene. It claimed to be entitled to appeal as the regulatory body approved by HMRC to monitor the Environment Credit Scheme and was concerned to do so because of the effect it perceived on the efficacy of that scheme if the judge's conclusions were correct. We agreed to hear counsel for Entrust because the administrators did not object and had joined Entrust as a defendant in the first place.

8. Accordingly the issues for our determination were (1) whether the administrators should be authorised to exchange contracts in respect of the particular site, and (2) whether the proceeds of sale of that site are an asset of the company and not held in trust for CDENT. At the conclusion of the argument we dismissed the appeal for reasons to be given later. What follow are my reasons for that decision.

The Regulations

9. The starting point must be the legislation regulating the Environment Credit Scheme. I have already sufficiently referred to the relevant provisions of the primary legislation. The relevant regulations are Regulations 30 to 36 (both inclusive) contained in Part VII. Regulation 30 contains definitions of "approved body", "approved object" and "qualifying contribution" by reference to the meanings of those expressions given in regulations 34, 33 and 32 respectively. It is convenient to set them out now.

10. An approved body as defined in regulation 34 is one which has been approved by Entrust. Regulation 33(1) provides that:

> "(1) A body is eligible to be approved if—
>
> (a) it is—
>
> (i) a body corporate, or
>
> (ii) a trust, partnership or other unincorporated body;
>
> (b) its objects are or include any of the objects within paragraph (2) below (approved objects);
>
> (c) it is precluded from distributing and does not distribute any profit it makes or other income it receives;
>
> (d) it applies any profit or other income to the furtherance of its objects (whether or not approved objects);
>
> (e) it is precluded from applying any of its funds for the benefit of any of the persons—
>
> (i) who have made qualifying contributions to it, or
>
> (ii) who were a contributing third party in relation to such contributions,
>
> except that such persons may benefit where they belong to a class of persons that benefits generally; . . .
>
> (f) it is not controlled by one or more of the persons and bodies listed in paragraphs (1A) and (1B) below;
>
> (g) none of the persons or bodies listed in paragraph (1B) below is concerned in its management; and
>
> (h) it pays to the regulatory body an application fee of £100 or such lesser sum as the regulatory body may require.

11. Regulation 33(2) sets out what may be approved objects. It is not necessary to set them out in full. They relate to environmental projects of all sorts, including the reclamation of land intended to prevent or reduce pollution, the provision of public amenities or the restoration of buildings in the vicinity of a landfill site and the preservation of natural habitats.

12. The Company was approved by Entrust under Regulation 34. It is a body corporate, all its objects fall within the definition of approved objects and its memorandum and articles of association ensure compliance with conditions (c) to

(e). It is not suggested that it has not always complied with conditions (f) to (h). Thus it is and always has been an approved body.

13. A qualifying contribution is defined in Regulation 32 in the following terms:

> "(1) A payment is a qualifying contribution if—
>
> (a) it is made by a registered person to an approved body;
>
> (b) it is made subject to a condition that the body shall spend the sum paid or any income derived from it or both only in the course or furtherance of its approved objects;
>
> (c) the requirements of paragraphs (2) to (2B) below have been complied with in relation to that payment; and
>
> (d) it is not repaid to him, or a contributing third party, in the same accounting period as that in which it was made."

No point arises in respect of sub-sub-paragraphs (c) or (d). Nor are sub-paragraphs (2), (2A) or (2B) relevant. The original payments made by the landfill site operator, as the registered person, were all made to an approved body, namely one or other of the second, third or fourth defendants.

14. In Regulation 30(2) the concept of 'spending' referred to in Regulation 32 (1)(b) above is explained. Before I refer to that provision I should note sub-paragraph (3) of regulation 32. It is in these terms:

> "(3) For the purposes of this Part where any qualifying contribution or income derived therefrom is transferred to a body as described in regulation 30(2)(d)—
>
> (a) the body to whom the sum is transferred shall be treated as having received qualifying contributions of the amount concerned; and
>
> (b) that body shall be treated as having received those qualifying contributions from the registered person or persons who originally paid them (but this shall not give rise to any further entitlement to credit in respect of those contributions)."

That provision applies because the second, third and fourth defendants, who were also approved bodies, made grants to the Company out of the sums paid to them by the landfill site operator. Accordingly the Company is to be treated as receiving qualifying contributions direct from the landfill site operator.

15. Regulation 30(2) provides:

> "(2) A body shall only be taken to spend a qualifying contribution in the course or furtherance of its approved objects—
>
> (a) in a case where the contribution is made subject to a condition that it may only be invested for the purpose of generating income, where the body so spends all of that income;
>
> (b) in a case not falling within sub-paragraph (a) above, where the body becomes entitled to income, where it so spends both the whole of the qualifying contribution and all of that income;
>
> (c) in a case not falling within either of sub-paragraphs (a) and (b) above, where the body so spends the whole of the qualifying contribution; or
>
> (d) where—
>
> > (i) it transfers any qualifying contribution or income derived therefrom to another approved body, and
> >
> > (ii) that transfer is subject to a condition that the sum transferred shall be spent only in the course or furtherance of that other body's approved objects."

16. Sub-sub paragraph (d) is the corollary of Regulation 32(3) and is not material. Similarly it is not suggested that (a) and (b) are material to any of the grants made to the Company. The grant made for the acquisition of the particular site which the judge authorised to be sold was made on terms that it was applied in the purchase of the land and its afforestation. Prima facie therefore it was "spent" for the purposes of Regulation 30(2).

17. Regulation 33A(1) imposes various obligations on an approved body. The two material ones are (a) and (b) which provide that the approved body shall:

> "(a) continue to meet all the requirements of regulation 33 above;
>
> ....
>
> (b) apply qualifying contributions and any income derived therefrom only to approved objects;"

In summary the underlying contention of Entrust is that the obligation to 'apply' qualifying contributions is a continuing obligation comparable to that imposed by (a)

and affects not only the original payment but the property representing it for the time being. Alternatively Entrust seeks to establish that 'income derived therefrom' consists of the whole of the proceeds of sale of property bought with the original contribution notwithstanding that in other contexts it would be classified as capital.

18. The right to recover contributions from the landfill site operator is laid down in Regulation 36. It enables HMRC, not Entrust, to serve a notice on the landfill site operator, in effect, disallowing the credit if:

> "(i) they are not satisfied that the contribution has been spent by the body only in the course or furtherance of its approved objects; or
>
> (ii) they are not satisfied that any income derived from the contribution has been so spent by the body;"

The landfill site operator on whom such a notice is served is obliged to repay HMRC the credit claimed in respect of the qualifying contribution.

19. Finally I should refer to the functions and powers of Entrust conferred by Regulation 34. Their function is to approve bodies which comply with the regulations. They have power to impose conditions on those bodies and to vary and revoke them and to revoke the approval altogether. HMRC may in its turn revoke its approval of Entrust as the regulatory body. Entrust is not entitled to reclaim the credit nor authorised by the Regulations to take any proceedings against an approved body or a landfill site operator to compel performance of its obligations under the Environment Credit Scheme.

The judgment of HH Judge Behrens

20. The judge set out the facts of the case in paragraphs 1 to 16. In paragraphs 17 to 26 he described the contract under which was made the grant for the acquisition of the particular parcel of land, Skerningham Woods, the administrators' anxiety to sell without delay and the acquisition of that and two other sites. In paragraphs 27 to 33 he explained the origin of the financial difficulties the Company was experiencing. In paragraphs 34 to 43 he described the concerns expressed in correspondence and otherwise of Entrust and the other environmental bodies which were parties. In paragraphs 44 to 48 he explained the proceedings and in paragraphs 49 to 62 he set out the material regulations.

21. The judge's consideration of the regulations ended with regulation 36(1)(a)(ii). He suggested that the right to claw back credits under that regulation was dependent on the proceeds of sale being classified as "income derived from the contribution". In paragraph 63 he noted that the same expression was used in regulation 33A(1)(b). He continued:

> "Thus two questions arose. First there was the question of whether the proceeds of sale amounted to income at all. Second

> there was the question of whether it was derived from the contribution."

For the reasons he gave in paragraphs 64 to 69 he concluded that the proceeds of sale were not 'income' and therefore could not be income derived from the contribution.

22. The judge considered the terms of the contract between the Company and CDENT and concluded that it gave CDENT no right to claim the proceeds of sale. He concluded as follows:

> "75. Once I have reached the conclusion that there is no breach of Regulation 33(A)(1)(b) I can see no reason why the statutory regime set up by the Insolvency Act 1986 should not take its course.
>
> 76. In those circumstances I propose to authorise the Administrators to enter into the contracts for the sale of Skerningham Woods.
>
> 77. It was agreed between the parties that each would pay their respective costs."

In respect of the application of the administrators he directed that

> "3.1 they be authorised to exchange contracts in respect of the sale of Skerningham Woods ("the Land"), and
>
> 3.2 the proceeds of sale of the Land are an asset of the Company and are not subject to a trust in favour of [CDENT]."

This Appeal

23. As I have indicated CDENT does not appeal but Entrust does. In the course of his submissions counsel for Entrust explained his client's concern to ensure that the administrators acted conformably with the Company's obligations under the Regulations, a concern which the administrators share. But it emerged that there was no actual dispute between them. Counsel for Entrust accepted that the normal rules relating to insolvent companies apply as well to companies which are approved bodies as to those which are not. In addition he accepted that the regulations permitted approved bodies to pay creditors whose debts had been incurred in carrying out the approved objects of an approved body. His concern was that the debts might have been incurred in pursuing other, unapproved, objects.

24. There is no evidence that such activities have been carried on by the Company and they would have been ultra vires the company and a misfeasance and a misapplication of its assets if they had been. The administrators are clearly aware of that and of their duty fully to investigate the consideration for a debt before paying it. Indeed they understood that it had been agreed at the meeting with the representatives of Entrust held on 26th March 2009 that the proceeds of sale would

not be distributed until it had been ascertained who the proper recipients were. If there is any doubt about that then, no doubt, the administrators will apply to the court again.

25. Entrust does not suggest that the judge's conclusion that the proceeds of sale of the sites bought with qualifying contributions are assets of the Company is wrong. It does not suggest that any of the four sites are held by the Company in trust for any other person, whether an approved body or not. Indeed it appeared that the part of the appellant's notice which challenged paragraph 3.2 of the judge's order had been included by mistake. Accordingly, and I did not understand this to have been contested, Entrust's appeal against that part of the judge's order had to be dismissed.

26. Accordingly the only remaining issue was whether the sale of the specific site the subject matter of the application, and of all the other sites in due course, should have been approved. It was not contested that the Company is insolvent. Nor was it suggested that the price payable under the contracts negotiated by the administrators was not the best price reasonably obtainable. The administrators have the requisite power of sale under paragraph 60 Sch B1 and paragraph 2 Sch 1 Insolvency Act 1986 and wish to exercise it. The only objections raised by Entrust related to the application of the proceeds of sale thereafter. That is not a good reason for challenging the order the judge made in paragraph 3.1 of his order. For those reasons I considered that the appeal of Entrust against paragraph 3.1 of the judge's order should be dismissed too.

27. It became clear from the oral argument that the concern of Entrust, as the regulatory body approved by HMRC, was how to police and enforce the obligations of an approved body imposed by regulation 33A. The fact that the application of the qualifying contribution and its income in the hands of an approved body was constrained by its memorandum and articles of association was not given the significance which, in my view, it deserved. Counsel for Entrust, when faced with this feature, commented that Entrust as the regulatory body should not have to fall back on the ultra vires doctrine.

28. For my part I consider that it should. The approval of a body corporate by Entrust under regulation 33 requires it to satisfy itself that the conditions set out in regulation 33(1)(b) to (d) are satisfied. This involves consideration of its objects and the restriction on distributions commonly found in the memorandum of association of a charitable company. Regulation 34 entitles Entrust to impose further or other conditions as it sees fit both at the time of giving its approval and subsequently. The sanction for which regulation 34 provides is the revocation of the approval of the body by Entrust. The ability to recover the credit is conferred on HMRC, not Entrust, and is exercisable against the landfill site operator as the registered person not the approved body. No doubt the conventional methods of enforcing public law obligations are available too, but not to Entrust. If it is considered that Entrust needs further powers of enforcement then they should be conferred by primary or secondary legislation.

29. Whether the judge was right to interpret 'income derived from' in regulation 33A(1)(b) and regulation 36(1)(a)(ii) as not including the proceeds of sale of an asset bought with a qualifying contribution is irrelevant to the issues we had to determine. Similarly whether the obligation imposed by regulation 33A(1)(b) to

"apply qualifying contributions" is a continuing obligation applicable to the property for the time being representing the qualifying contribution did not arise on this appeal. In my view the resolution of both those questions should await a case in which they are relevant.

30. We indicated at the conclusion of the argument that in our judgments dismissing the appeal we might include a preliminary view as to the costs consequences. Entrust were not parties to the proceedings before the judge. At that stage the administrators and CDENT agreed to pay their own costs. We have no grounds for interfering with that order and I would not seek to do so.

31. The position is different in relation to the costs of this appeal. For the reasons I have indicated Entrust's appeal was misconceived. It was brought for the understandable reason that Entrust, as the regulatory body, was concerned as to the future impact of the judge's judgment on its ability in other cases to compel performance of what it conceived to be the obligations of an approved body. I see no reason why the creditors of the Company should pay any part of the costs of that exercise. Accordingly I would, subject to any contrary argument Entrust may seek to advance, dismiss this appeal with the costs of the administrators to be paid by Entrust and assessed if not agreed on an indemnity basis. I would allow Entrust 14 days from the date on which our judgments are handed down to apply to vary or set aside that part of our order. If it wishes to do so it should send with its application a written argument of counsel indicating the grounds on which it relies.

32. For all these reasons I would:

(1) dismiss the appeal

(2) order Entrust to pay the costs of the appeal to be assessed, if not agreed, on an indemnity basis, and

(3) give Entrust liberty to apply to vary or set aside paragraph (2) above within 14 days of the date on which judgment is handed down, upon notice to the administrators accompanied by a written argument of counsel setting out the grounds relied on.

Lord Justice Longmore:

33. I agree.

Sir John Chadwick:

34. I also agree.