

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMPANIES AND INSOLVENCY LIST (ChD)

IN THE MATTERS OF:

MARC LIMITED

MARC (UMU) LIMITED

MARC (BAKERY) LIMITED

MORTONS THE RESTAURANT LIMITED

MARC (GREENHOUSE) LIMITED

(TOGETHER "THE COMPANIES")

BEFORE DEPUTY INSOLVENCY AND COMPANIES COURT JUDGE BARNETT

ON 7 DECEMBER 2018

AND IN THE MATTER OF THE INSOLVENCY ACT 1986



CR-2018-006414

CR-2018-006420

CR-2018-006416

CR-2018-006415

CR-2018-006419

~~DRAFT ORDER~~

FRIDAY



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Q7LRFZ6Z
28/12/2018

#6

COMPANIES HOUSE

UPON the petitions of the Commissioners for Her Majesty's Revenue and Customs ("HMRC") presented to this court on 1 August 2018 (the "**Petitions**").

AND UPON the Orders of Insolvency & Companies Court Judge Barber dated 7 November 2018 for the winding up of the Companies (the "**Orders**")

AND UPON the application of the Companies and Mr Marlon Abela, a director of the Companies and creditor and contributory of Marc Limited (the "**Application**") for the Orders to be rescinded

AND UPON hearing Miss Raquel Agnello QC, counsel for the Applicants, Mr Raj Arumugam, counsel for HMRC, and Mr James Barker, counsel for Messrs Wilson and Sykes acting as joint liquidators of the Companies ("**the Joint Liquidators**")

AND UPON THE COURT HAVING READ the third witness statement of Marlon Abela dated 14 November 2018, the fourth witness statement of Marlon Abela dated 19 November 2018, the fifth

witness statement of Marlon Abela ("Mr Abela") dated 4 December 2018 and the second witness statement of Mark Wilson dated 4 December 2018

AND UPON the undertaking of Chan Neill Solicitors to pay by 4pm on 13 December 2018 (i) the Petition debts in the sum of £1,410,556.69, (ii) the Petition costs in the sum of £12,512, (iii) all other liabilities of the Companies to HMRC incurred prior to 7 November 2018 in the sums of £904,124.21 and £136,868.08 (iv) HMRC's costs of these applications in the sum of £5,000, or such lesser amount as may be agreed, (v) the Official Receiver's fees in the sum of £55,000, and (vi) interest in the current sum of £5121.97 and thereafter accruing on (i) and (iii) above.

AND UPON Charles Russell Speechlys undertaking to pay, within 2 business days of the Joint Liquidators informing Charles Russell Speechlys of the sums due, (such undertaking capped at an amount of £525,000), (i) the Joint Liquidators' disbursements (save for the Official Receiver's fees as provided for above), and (ii) 50% of the Joint Liquidators' time costs on account, and undertaking to hold the residue of the sum of £525,000 after payment of items (i) and (ii) until (a) an agreement between Mr Abela, the Companies and the Joint Liquidators as to the quantum of the Joint Liquidators' costs and expenses of the liquidations; alternatively (b) a determination of the quantum of the Joint Liquidators' costs and expenses of the liquidations pursuant to an assessment in accordance with the Insolvency (England and Wales) Rules 2016; alternatively (c) further order of the court, and thereafter pay within 2 business days that agreed or determined sum (such undertaking capped at the amount of the residue).

AND UPON Mr Abela undertaking through his Counsel to the Court to provide the irrevocable instruction to Chan Neill Solicitors to hold the sums provided by or on behalf of or beneficially owned by Mr Abela which are currently in their client account solely for the purposes of carrying out the terms and undertakings in this order

AND UPON THE COURT BEING SATISFIED that the Orders should be rescinded

IT IS ORDERED THAT:

1. The Orders shall be rescinded pursuant to IR r.12.59(1) of the Insolvency (England and Wales) Rules 2016.

2. The Registrar of Companies shall remove the Orders from the records of the Companies kept by him and place in such records a note that the Orders were rescinded by Order of this Court.
3. Mr Abela shall use reasonable endeavours to procure that the Companies will pay, by Tuesday 18 December 2018, all of the Companies' creditors as set out in the Schedule at pages 1 – 3 of exhibit MA6 to the fifth witness statement of Marlon Abela dated 4 December 2018 (or as may be otherwise agreed with creditors), excluding:
 - a) The dilapidations claim by BHSL against MARC Limited;
 - b) The debts and costs sought by BHSL as Supporting Creditor, pending agreement with BHSL as to the sums due or further order of the Court;
 - c) the sums due to City of Westminster in respect of rates (insofar as a payment plan is agreed between the Companies and City of Westminster in respect of those liabilities);
 - d) the sums due to Ealing Borough Council in respect of rates (insofar as a payment has been agreed between Marc (Bakery) Limited and Ealing Borough Council in respect of those liabilities);
 - e) The liabilities which have been paid or secured pursuant to Chan Neill Solicitors' undertaking recorded above and Charles Russell Speechlys' undertaking recorded above.
4. Mr Abela and/or the Companies shall procure, within 7 days of this order, that all companies listed as creditors of the Companies in the Related Party Creditors Schedules of the Companies' respective Statements of Affairs made in the liquidations shall bind themselves by deed to subordinate the debts due to them from the Companies ("the Debts") on terms that, for one year from the date of this Order (i) the Debts shall be subordinated to all other debts of the Companies, whether present or future, actual or contingent, (ii) they shall make no demand for or receive payment for the Debts (iii) the Debts shall not be provable for in any liquidation of the Companies, save that (iv) nothing in such deeds shall restrict the parties' rights to write off or to capitalise the Debts.

5. Mr Abela and/or the Companies shall, by 4pm on Tuesday 18 December 2018, file with the court witness statements confirming their compliance with paragraphs 3 and 4 above.
6. All payments made by the Joint Liquidators or the Companies since the date of the Joint Liquidators' appointment or envisaged by this order are hereby validated for the purposes of section 127 of the Insolvency Act 1986 ("IA86").
7. The Joint Liquidators have permission to pay any and all outstanding sums that would have constituted fees, costs, and/or expenses of the liquidations had the Orders not been rescinded from funds in hand and/or received by them (whether before or after the date of this Order) from the date of their appointment.
8. The Joint Liquidators are released pursuant to section 174(4A) IA86 from the date of this Order.
9. The Petitions shall be restored and re-listed for hearing in the winding up list on 19 December 2018.
10. The Applicants shall pay the Respondents' costs of the Applications, to be subject to detailed assessment if not agreed.
11. Save for the payments to be made pursuant to paragraph 7, within 7 days of the date of this Order the Joint Liquidators shall release to the Companies all funds currently held by them or their agents belonging to the Companies.
12. Pursuant to CPR r.5.4C and r.5.4D, no person who is not a party to these proceedings may obtain a copy of the confidential exhibit attached to the fourth witness statement of Marlon Abela dated 19 November 2018 without the permission of the Applicants or the leave of the court following an application on notice to the Applicants.
13. Liberty to apply.

DATED:

Service of the Order

The Court has provided sealed copies of this Order to the serving party: