Re: Marann Brooks CSV Ltd

High Court of Justice Chancery Division

Ch D

Before: Mr. Justice Patten

Wednesday 4th December, 2002

JUDGMENT

1. This is a petition by the Secretary of State for Trade & Industry, which is brought under Section 124(A) of the Insolvency Act 1986, seeking a winding-up order in respect of a company called Marann Brooks CSV Ltd.

2. The company in question came into existence at the beginning of 2001 and, on the evidence, began trading in about February of that year. The business of the company was to solicit from members of the public instructions to represent them in making proposals to local rating authorities for a reduction in the rating assessments of business premises in the ownership of those clients. It is clear from the evidence before me that the business of the company is, in every sense, a successor to that previously carried on by two other companies, Hanson (London) Ltd and Hanson (Group) Ltd, which have been wound up under Section 124(A) by the Registrar for conducting similar types of business.

3. The management of the Hanson companies was carried out by a Mr. Lees- Hilton, assisted by Mr. Edward Liddle, who is currently the Director of Marann Brooks CSV Ltd. The evidence discloses that in relation to the Hanson companies instructions were obtained from property owners that proposals be made for a reduction in their business rate and, under the terms of the instructions solicited, Mr. Lees-Hilton received, through the company, advance payment of a proportion of the fees chargeable in respect of the services relating to the making of those proposals. So far as I am aware, few, if any, such proposals resulted in a reduction in the rating assessments made, but, more to the point, in a significant number of cases, having made a proposal for the reduction in the rating assessment of the relevant properties, Mr. Lees-Hilton and the other representatives involved in the proposal failed to turn up to the hearing before the valuation tribunal.

4. It is clear, putting it at its lowest, that the business of that company was conducted in a thoroughly unsatisfactory manner, with the result that most, if not all, of the clients paid not insignificant sums of money and received nothing in return. If one looks at the evidence more critically, it is possible to say that the scheme had all the hallmarks of an advance fee fraud.

5. Between November 2000 and February 2001, which is the period immediately after Mr. Lees-Hilton had fled the country to escape prosecution in relation to these allegedly fraudulent activities, Mr. Liddle continued to manage the Hanson companies. His evidence, and his answers to the inspectors appointed by the Department of Trade and Industry, were to the effect that Hanson employed sales staff, one of whom acted as a bookkeeper, and that Mr. Liddle concentrated on what he described as the professional services side of the business. He told the inspectors that the management of the professional services side of the business entailed managing staff and the companies' operations on a day-to-day basis. It is also clear, however, that, as a bank signatory, Mr. Liddle was the only company employee able to make cheque payments from the time that Mr. Lees-Hilton departed the jurisdiction. The evidence is that Mr. Liddle accepted that he had signed and issued cheques until the Hanson companies ceased trading in late February 2001.

6. That brings me to the *modus operandi* of Marann Brooks itself. As I have already said, the company started to trade in about February 2001. There is in evidence a standard form of letter, dated 25th April 2001, which has Mr. Liddle's name at the end of it and clearly was intended to be sent either to existing clients of Hanson or to any other potential clients who may have been aware of Hanson's existence and might have been tempted to use the services of those companies. The letter begins with a paragraph which contains a remarkable understatement of the true position, where it refers to the retirement to live abroad of the principal shareholder and controller of the Hanson companies, namely, Mr. Lees-Hilton. It goes on to refer to the remaining management having been forced to review the company's ability to continue to service the existing client and instruction base from the resources and personnel available. It went on:

"The consequence of that review has been that in order to ensure continuity of knowledge and service, Hanson has instructed Messrs. Marann Brooks to conclude the matter on your behalf."

The reference to Marann Brooks in the third paragraph of the letter is to that firm being, 'A respected firm of surveyors who occupy a suite in this building.' Those words clearly gave the impression to any reader that Marann Brooks was a long-established firm of surveyors, when in fact it was nothing of the sort.

7. The evidence, which I shall refer to shortly in this judgment, is that no properly qualified surveyors or valuers were employed by the company to carry out the valuation proposals and to provide the necessary valuation material, in the event of a hearing before the valuation tribunal being necessary. What in fact happened was that, in relation to new would-be customers, sales staff were employed to cold-call those customers, and I have been shown a copy of the script which the sales staff were intended to follow in carrying out that cold-calling. It consists of asking a number of questions about the length of time that the occupier had been in the premises, whether the occupier had looked at the rates bill before, and whether they were interested in having somebody call round to assess the premises with a view to advising about a possible proposal to reduce the current rating of the premises. If the client expressed an interest, an appointment was made and the premises were visited by an assessor who, on the evidence, was not a qualified surveyor or valuer.

8. That assessor produced a report, which again was in standard form. The printed standard form report contains routine property details, such as the nature of the premises, whether they were detached or semi-detached, part of a block of shops or otherwise, what the basic form of construction of the premises were, and how old they were. Details were also provided about the date of occupation of the present owner or occupier, together with details about the location and general condition of the premises. None of that material in itself would have been sufficient to form the basis of a new valuation proposal.

9. If, having received the visit from the assessor, the customer was prepared to take the matter further, then he or she was asked to enter into a fee agreement, under which instructions were given to Marann Brooks, described in the standard form letter of instruction as "Messrs Marann Brooks":

"... to investigate and, if deemed appropriate, submit a proposal to alter the rating list to the relevant valuation office".

The letter of instruction went on to say, in paragraph 2:

"We confirm that if the proposal is rejected as invalid I/we/the company will not have incurred any liability whatsoever and this instruction should be null and void and of no further affect".

In paragraph 3 it says:

"We agree that no fees will be incurred or become payable by me/us/the company upon signing this instruction, and the costs will not become due or payable unless and until an acknowledgement that the proposal is valid has been received from the valuation office".

10. The agreement then goes on to deal with what should follow from an acknowledgement that the proposal is valid. Clause 4 of the letter of instruction provides that:

"Within four weeks of receipt by Marann Brooks and an acknowledgement of the valid proposal from the valuation office, Marann Brooks will inspect, survey and value the premises in accordance with the RICS/ISBA guidelines for rating purposes, and the fee as set out in Section A below becomes due and payable. The fee as set out in Section B will become due and payable only upon settlement of a proposal."

At the foot of the letter is a scale of fees, dependent on the rateable value of the premises in question, ranging between £340 plus VAT for a property with a rateable value of between £6,000 and £9,000, and £700 in relation to a property whose rateable value exceeded £25,000. The fee prescribed in Section B was a commission, equal to 25% of the agreed or determined reduction in the rateable value.

11. Although the letter contains, as I have indicated, three paragraphs referring in terms to an acknowledgement by the valuation officer of a valid proposal, the reality of the procedure prescribed under the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993, which govern proposals to amend the local rating lists, is that a proposal to amend the value shown in the current list has to be made within prescribed time limits from the day on which the list is compiled. If a proposal is submitted within those time limits, under regulation 6, an acknowledgement will be sent out of its receipt, but that acknowledgement does not in terms include any statement or representation that the proposal has been validly made. The scheme of the rules is that if a proposal is not made within the time limits prescribed under the regulations, then under regulation 7 the valuation officer has to give notice within four weeks of the service of the proposal that he is of the opinion that the proposal has not been validly made.

12. I mention those regulations not so much to

highlight the actual inaccuracy in the terms of the instruction letter in its description of the procedural process, but rather to emphasise that an acknowledgement of the validity of a proposal, even if given, would do no more than to confirm that the proposal had been made within the time limits prescribed. It would certainly not, and does not, carry with it any confirmation that the proposal is likely to result in a reduction of the rateable value. However, to a person not aware of the regulations, it seems to me that there is a distinct possibility that the reference in the letter of instruction to an acknowledgement of a valid proposal would carry with it, and did carry with it, an inference that the proposal put forward by Marann Brooks was likely to produce a successful result. That is important, because it is, or was, the receipt of the acknowledgement from the valuation office which triggered the liability of the client for the payment of the initial fee.

13. There are in evidence a number of such acknowledgements and, from the papers which the Department of Trade has obtained, it looks as if, following a visit by the assessor, the client was informed that the company, Marann Brooks, would be submitting a proposal to alter the rating list, "of which the assessor's report will form the basis." It is clear, as I have already indicated, that the assessors' reports which I have seen could not possibly form a suitable basis for a successful proposal.

14. The evidence is that some 221 clients instructed this company to make proposals and paid the initial fees that I have referred to. Not one of them, on the evidence, actually obtained a reduction in the rateable value of their premises and, of those 221, only 29 even had surveys carried out. It seems to me clear beyond argument that, under the terms of the letters of instruction properly construed, Marann Brooks had an obligation, once instructed, not only to make the proposal but, unless and until those instructions were rescinded, to carry out the further steps necessary to actually obtain the reduction. That would require, in every case, a survey and valuation to be carried out and, as I have already indicated, that was only done in 29 out of the 221 cases.

15. I have been shown an example of one of those surveys. It comprises no more than two or three sheets of paper, beginning with an outline floor plan of the premises, which in the case in question were shop premises, with some measurements. The accompanying sheet, on which are printed the words, "Confirmation of survey in accordance with RICS/ISBA guidelines. For internal use only", contains the name of the client, the address of the premises, the type of business, the location of the premises -- on the example I have got not even the proper postal address is included -- a brief description of the construction of the premises -- in this case it is said they were brick double- fronted -- and some additional notes, which in this case simply refer to there being no parking and to the first floor having no heating or electricity and being too damp to use.

16. As part of the same bundle of documents, there is an assessor's report in the form that I have already referred to. None of these documents involves any valuation of the premises, and it goes without saying that any reduction in the rateable value would require a proper valuation in accordance with the relevant guidelines, including, so far as necessary, reference to evidence of comparable rateable values or letting values. If, and the evidence suggests that this is the position, the surveys and valuations took the form that I have seen, it is quite clear that there was no prospect whatsoever of obtaining a reduction in the rateable value of the premises in question.

17. Mr. Liddle has attempted to give an explanation about the failures that I have referred to. I should mention that under the directions of the Registrar given prior to this hearing, in the usual way, there was a requirement that any deponent to a witness statement or affidavit should tender himself for cross-examination and that, in the absence of such attendance, the evidence should not be read. Mr. Liddle has not turned up today and has written to the Treasury Solicitor, indicating that, because the presentation of the petition has effectively destroyed the business of the company, he does not intend to take any steps to defend the petition.

18. In those circumstances, his evidence is untested, but I was invited by Mr. Caddick, really for completeness, to look at the explanation which was provided. It consists of a single paragraph in a witness statement, dated 25th July 2002, and simply says:

"There have been a number of cases where negotiations have commenced and I can exhibit three examples of settlements with customers. It remains the case that there has been no tribunal work."

The examples that are exhibited to that witness statement comprise three standard form agreements, none of which has been executed by the valuation officer or any other representative of the local rating authority. It is also far from clear from those documents whether they have in fact even been

signed by Marann Brooks. In any event, that evidence does not even begin to suggest that there have been successful reductions of the rateable value for the premises in question.

19. Over and above the complaints that I have just outlined about the nature of the business of this company, a number of subsidiary allegations were made. These, in broad terms, include the failure on the part of the company to file annual returns, the failure to notify Companies House of changes in the office of the company, and a failure to file audited accounts. Since the petition was presented, I am told that annual returns have been filed in the year up to August 2001, but as yet the annual return for the year to August 2002 has not been filed. Of more significance, there have been no audited accounts filed, for any period, since the company commenced trading.

20. In those circumstances, it seems to me that there are clear public interest grounds for winding-up this company, and I shall so order. The test to be applied is that referred to by Nicholls L.J. in the reported case of Re Walter L. Jacob & Company Limited [1989] BCLC 345. The Court has a power, in relation to petitions under Section 124(a,) to decide that in the public interest the business of the company should be brought to an end and, in so doing, the Court indicates that the company's conduct has, in its judgment, fallen below, "The generally accepted minimum standards of commercial behaviour and that those who, for whatever reason, fall below those standards, should have their activities stopped." It seems to me that, for the very reason that the Registrar ordered the winding-up of the two Hanson companies, this company should be wound up as well. There has been no evidence which can possibly justify the taking of fees in return for no work being carried out and, on the evidence before me, there is every reason to suppose that this was a thoroughly dishonest exercise, which should be brought to an end as quickly as possible.

21. That leaves me to deal with a point which arises about the court's jurisdiction. In this particular case, the registered office of the company is in England and there is no evidence to suggest that any of its business was conducted elsewhere than in England. For those reasons the court has jurisdiction, under Section 124(A), to wind the company up on public interest grounds, whether or not the provisions of EC Regulation No. 1346/2000 on insolvency proceedings ("the Regulation") applies. I say that because under Article 3 of the Regulation the courts which are given jurisdiction in relation to insolvency proceedings are those of the member state within the territory in which "the centre of a debtor's main interest is situated." In the case of a company or legal person the place of the registered office, under the Regulation, is presumed to be the centre of its main interest, in the absence of proof to the contrary.

22. Applying those provisions, no jurisdictional difficulties occur. However, Mr. Caddick, on behalf of the Secretary of State, has asked me to express a view, in the interests of providing guidance in other cases, as to whether public interest petitions under Section 124(A) do in fact fall within the scope of the Regulation at all.

23. So far as I am aware, this is not a question which has been considered before by the English courts. The jurisdiction of the High Court to make a winding-up order against any company, including a foreign company, was previously exercisable provided that the company in question had assets in, or a sufficient connection with, England. The Regulation which came into force on 31st May 2002 and which is of direct effect, has changed this by conferring jurisdiction based on, as I have already indicated, what is referred to as the centre of the debtor's main interest. In most cases this will be by virtue of the provisions of Article 3(i), the place where the company is registered, but in cases where the company conducts business in a number of member states, that presumption may be rebutted. The Regulation refers to insolvency proceedings. They are defined in Article 2(a) as:

"The collective proceedings referred to in Article 1(i). These proceedings are listed in Annex A."

One then looks at Article 1(i). That provides that:

"This regulation shall apply to collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator."

24. Annex A, in relation to the United Kingdom, sets out five specified types of proceedings. They are: winding-up by or subject to the supervision of the court; creditors' voluntary winding-up with confirmation by the court; administration; voluntary arrangements under insolvency legislation; and bankruptcy or sequestration.

25. If one took the list in Annex A in isolation from the other provisions of the Regulation, the reference to winding-up by or subject to the supervision of the court, would, on the face of it, include petitions brought under Section 124(A). Section 124(A) was

introduced into the Insolvency Act by Section 60(3) of the Companies Act 1989 and forms part of Part IV of the Act, which deals with the winding-up of registered companies. It is clear, however, as I have already indicated, that the purpose and basis of a winding- up petition brought under Section 124(A) is to curtail the operation of the company on public interest grounds. It is not a condition precedent to the exercise of that jurisdiction that the company should itself be insolvent, and in many cases the companies wound up on these grounds will be solvent. Indeed, an argument that often arises on public interest petitions relates to the effect which the winding-up order will have on the creditors and other persons interested in the continuation of the company.

26. Nor is insolvency as such sufficient in itself to justify winding-up on public interest grounds. That point was made very clearly by Millett L.J. in his judgment in Re Senator Hanseatische Verwaltungsgesellschaft mbH [1996] 2BCLC 597. That was a case involving a winding-up petition under Section 124(A), where it was contended that such proceedings fell within the provisions of the Brussels Convention as being a "civil or commercial matter" within the meaning of Article 1. The consequence of that argument, if right, was that the courts of Germany would have had jurisdiction to deal with the matter, rather than the courts of England. The Vice Chancellor rejected that argument and I shall come, very shortly, to his reasons for doing so, but when the matter reached the Court of Appeal, Millet L.J. at page 605(i) said this:

"If the Secretary of State makes good his allegations, he is plainly entitled to the view that it is expedient in the public interest that the company be wound up in order to protect the public by bringing the scheme to an end. I reject Mr. Bannister's submission that the Secretary of State has no business to intervene in the case where no illegal activity is being carried on. The expression, 'expedient in the public interest', is of the widest import. It means what it says. The Secretary of State has a right and, some would say, a duty, to apply to the court to protect members of the public who deal with the company from suffering inevitable loss, whether this derives from illegal activity or not. The common case in which he intervenes is where an insolvent company continues to trade by paying its debts as they fall due, out of money obtained from new creditors. The insolvency is the cause of the eventual loss but it is the need to protect the public, not the insolvency, which grounds the Secretary of State's application for a winding-up order in such cases. The analogy with his allegations in the present case, while not exact, is close."

I have quoted that passage because it emphasises that, even in cases where the company subject to the winding-up proceedings is in fact insolvent, that is not the basis on which the court exercises its jurisdiction.

27. The Vice Chancellor decided, at first instance in that case, that Section 124(A) petitions did not fall within Article 1 of the Brussels Convention, and that the English court consequently had jurisdiction to deal with the petition. Article 1 of the Convention provides that:

"This Convention shall apply in civil and commercial matters, whatever the nature of the court or tribunal. It shall not extend in particular to revenue, customs or administrative matters. The Convention shall not apply to ... (ii) bankruptcy proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings."

Counsel for the Secretary of State submitted to the Vice Chancellor that winding-up petitions under Section 124(A) were brought by the Secretary of State in his ministerial role, not in his private capacity, and that the petitions were brought for the purposes of protecting the public interest, thereby raising issues of public law, not private law. For those reasons, Mr. Briggs Q.C, who was appearing for the Secretary of State, submitted that the proceedings could not be described, for the purposes of Article 1, as civil and commercial matters.

28. After considering the decision of Knox J. in Re A Company No. 007021 of 1994, unreported, Sir Richard Scott expressed his conclusions on that issue in these terms:

"The civil and commercial matters, to which reference is made in Article 1, are, in my opinion, as appears from the two European Court decisions, essentially matters in which the private rights and obligations of individuals are in question. The two European Court cases establish that a case in which the plaintiff is a public authority, acting pursuant to its public powers or in discharge of its public duty, and is inviting the court to grant relief in the general public interest and not for the narrow purpose of enforcing private rights or obligations, is not civil or commercial within the sense of those words in the first sentence of Article 1. Such a case seems to me analogous to the administrative matters to which reference is made in the second sentence of Article 1. Accordingly, in my judgment, in agreement with Knox J, the winding-up petitions presented by the

Secretary of State under Section 124(A) are not caught by the Brussels Convention. Article 16, giving exclusive jurisdiction to the courts of Germany, does not, in my view, apply."

29. That decision does not of course deal with the issue which I have to decide, which is whether or not a public interest winding-up petition falls within the Regulation, but it is relevant as part of the background in this sense and for this reason. The recitals to the Regulation indicate in terms, particularly in Recitals 2, 3 and 4, that the Regulation was intended to provide for the proper functioning of the internal market by requiring "Co- ordination of the measures to be taken regarding an insolvent debtor's assets." Recital 4 states:

"It is necessary for the proper functioning of the internal market to avoid incentives for the parties to transfer assets or judicial proceedings from one member state to another, seeking to obtain a more favourable legal position (forum shopping)."

Recital 7 states:

"Insolvency proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings are excluded from the scope of the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the conventions on accession to this convention."

Finally, there is the statement in Recital 9, that:

"This regulation should apply to insolvency proceedings where the debtor is a natural person or a legal person, a trader or an individual."

There follows an explanation of why undertakings, such as insurance undertakings and credit institutions, are excluded from the Regulation, the reason being that they are subject to special arrangements under which, "The national supervisory authorities have extremely wide ranging powers of intervention".

30. It appears from these recitals that the draftsman of the regulation had two objectives in mind. First of all, to deal with the problem of forum shopping, that arises in cases of cross-border insolvency. Secondly, to remedy the fact that the machinery of the Brussels Convention, by virtue of the express exclusions from Article 1 of that convention, does not extend to insolvency proceedings.

31. It seems to me to be implicit in the decision of the Vice-Chancellor that petitions under Section 124(A) were not encompassed within the reference to "the winding-up of insolvent companies" within the second exception to Article 1 of the Convention. It is clear that proceedings of that kind would (but for the exception) have fallen within Article 1. If the Regulation was intended to cover insolvency proceedings excluded from the Brussels Convention by exception (ii), it follows that it does not extend to winding-up petitions under Section 124(A), which never fell within the Convention at all, but were reserved to the national court charged with the enforcement of the relevant public interest.

32. That view of the scope of the Regulation is, I think, reinforced when one looks at the terms of Articles 1, 2 and 3 that I have referred to. Although Annex A, as I have indicated, refers to winding-up by the court in general terms, without specific reference to insolvency, the provisions of the articles themselves do refer to insolvency proceedings and, more to the point, the definition of insolvency proceedings in Article 1 is to insolvency proceedings entailing the partial or total divestment of a debtor. It seems to me, therefore, that, construing Annex A by reference to the terms of the articles themselves, it is confined to insolvency proceedings, i.e. winding-up proceedings, brought on grounds of insolvency and not on public interest grounds.

33. If further justification for that view is needed, it can, I think, be found in the judgment of Sir Richard Scott in Re Senator Hanseatische, where at page 581G he said this:

"The Section 124(A) petitions were presented in England for reasons of public interest, as perceived by the Secretary of State, a government minister. The petition will fail or succeed by reference to a judicial opinion as to what is just and equitable, having regard to the social requirements and social concerns raised by the scheme and its operation in this country. It seems to me utterly ridiculous to suggest that the foreign court could be expected to adjudicate on such a petition. The jurisdiction objections presented by Mr. Ross Munro would lead to the conclusion to the effect that a Section 124(A) petition could not be presented against a foreign company or a foreign partnership, so as to close down or wind-up the business of the company or partnership in this country. That cannot, in my view, be right."

That reasoning has equal application to the possibility of a Section 124(A) petition being considered by a foreign court by virtue of the provisions of the Regulation.

34. For those reasons I would, had it been necessary for me to do so, have concluded that public interest petitions are not within the terms of the EC Regulation. For the reasons that I have given, I will

make the usual compulsory order winding-up the company.

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