

SIMON PASSFIELD: SECTION 127 OF THE INSOLVENCY ACT 1986 INVALIDATES THE POST-PETITION COMPROMISE OF CLAIMS AGAINST A COMPANY



In *Officeserve Technologies Ltd (in liquidation) v Anthony-Mike* [2017] EWHC 1920 (Ch), HHJ Paul Matthews (sitting as a High Court Judge) has given some helpful guidance on the scope of s.127 of the Insolvency Act 1986 (which renders void any 'disposition' of property made by a company between the presentation of a winding up petition and the consequent winding up order) and the proper approach to applications for retrospective validation orders.

The judgment arose in the context of a trial of preliminary issues relating to a misfeasance claim brought by the liquidator against a former director of the company. The director asserted that the right to bring such claim had been compromised by a settlement agreement entered into between the company and the director prior to liquidation (but after the presentation of the winding up petition) in full and final settlement of all and any claims against the director "in connection with or arising from [his] employment".

HHJ Matthews held that as a matter of construction the settlement agreement did not compromise the company's claims against the respondent in his capacity as a director of the company.

However, he went on to conclude that such a compromise would have been invalid in any event, holding that the destruction, or at least the reduction in value, of a property right belonging to the company, causing an immediate and equivalent accrual in value to another person falls within the definition of 'disposition' in s.127 of the Insolvency Act 1986 (see [90]). In this regard, it is sufficient that identifiable property by some act having legal consequences (e.g. the surrender of a lease, the release of a debt or the cancellation of a charge) ceases to be in the ownership of the company, so that it is no longer available to the liquidator of the company for statutory purposes, and the value accrues to some other person, even though that other person cannot necessarily be said to become the owner of the same property (see [99]).

The Judge further held that in considering whether to make a retrospective validation order, the court is entitled to use the benefit of hindsight in determining whether or not the relevant disposition was for the benefit of the company's creditors generally (see [110]).

The judgment reinforces the importance of the *pari passu* principle and illustrates the wide-ranging nature of s.127.

Simon Passfield instructed by Veale Wasbrough Vizards LLP acted for the successful applicants.

[Click here](#) to read the judgement in full.