Neutral Citation Number: [2025] EWHC 1291 (Ch)

Case No: CR-2023-002346

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

The Rolls Building
7 Rolls Buildings
Fetter Lane, London
EC4A 1NL

Date: Wednesday, 2 April 2025

IN THE MATTER OF MPB DEVELOPMENTS LTD
AND IN THE MATTER OF THE INSOLVENCY ACT 1986
AND IN THE MATTER OF THE COMPANIES ACT 2006

Before:

MRS JUSTICE JOANNA SMITH

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Between:

(1) CRESTA ESTATES LIMITED
(2) LUXOR PROPERTIES LIMITED
(3) STANBRECK PROPERTIES Ltd — **Applicants**

- and -

(1) MPB DEVELOPMENTS LIMITED
(2) PAUL HILTON
(3) MATTHEW WELSH — **Respondents**

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MR TIM MATTHEWSON (instructed by **Kingsley Napley LLP**) appeared for the **Applicants**.
MR LOUIS GRANDJOUAN (instructed by **Mezzle Law**) for the Second and Third **Respondents**.

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APPROVED JUDGMENT

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MRS JUSTICE JOANNA SMITH:

1. This is a costs hearing following the determination of the Petition in these proceedings, as a result of which MPB Developments Limited ("**the Company**") was wound up by my order dated 28 January 2025 for the reasons I gave in my judgment of the same date (neutral citation number [2025] EWHC 198 (Ch) ("**the Judgment**")).

2. In this ruling on costs, I assume knowledge on the part of the reader of the facts and matters set out in the Judgment and I will adopt the same abbreviations. Specifically, for present purposes, the background to the Petition is set out in paragraphs [3]-[11] of the Judgment, while the relevant procedural background (including the failure on the part of the Respondents to serve expert reports, to which I shall return later) is at paragraphs [12]-[26].

3. By paragraph 2 of the 28 January 2025 order, the costs of the Petition and the Petitioners' application for costs orders against Mr Hilton and Mr Welsh personally are to be determined at this hearing. On 18 February 2025, the Creditors filed and served an application notice seeking costs orders against Mr Hilton and Mr Welsh together with a draft order. The Petitioners rely upon the sixth witness statement of Mr Hughes in support of that application.

4. Mr Welsh and Mr Hilton have served a joint responsive statement dated 14 March 2025 which they have both signed. I understand this to have been prepared at a time when they were acting in person and, although the CPR applies to litigants in person just as it applies to other litigants, I am prepared to permit some leeway in this case and treat the joint statement as a CPR-compliant statement, as I was invited to do by Mr Grandjouan, now acting on their behalf. I did not understand there to be any objection to my taking this course from the Petitioners. Mr Hughes served a seventh witness statement in response to Mr Hilton and Mr Welsh's joint statement.

5. I have read the evidence in full and was taken during submissions by the parties to various of the exhibits to the statements. Mr Matthewson, who appeared on behalf of the Petitioners at the hearing of the Petition and before me today, provided the court with a detailed and helpful skeleton argument. Mr Grandjouan, instructed relatively recently on behalf of Mr Hilton and Mr Welsh, also provided me with a helpful skeleton argument. Both counsel elaborated on their skeletons at the hearing.

The application that Mr Welsh and Mr Hilton pay the Petitioners' costs of the Petition.

6. These costs are said to include the costs of the Creditors' winding up Petition that was determined as a preliminary issue at the hearing in January 2025, together with the costs of the contributory's winding up petition and the unfair prejudice petition, which were adjourned until the determination of the Creditors' winding up petition (see paragraphs [2] and [14] of the Judgment).

7. I understand the costs of the Creditors' winding up Petition to represent the vast majority of the costs incurred owing to the decision to try it as a preliminary issue, and I accept Mr Matthewson's submission that the costs of the other petitions should also be addressed by this judgment, notwithstanding Mr Grandjouan's arguments to the contrary.

8. I accept in broad terms that the defence to the Creditors' winding up Petition was really the first line of argument to the broader winding up petitions and that the Petition was generally, as Mr Matthewson put it, a coherent piece, such that his clients should not be penalised in costs for the fact that two aspects of the Petition were effectively adjourned pending the outcome of the preliminary issue.

Legal principles

9. Mr Hilton and Mr Welsh are parties to the proceedings and the Petition is clear that costs will be sought against them. This has also been drawn to their attention in correspondence, as is clear from a letter from Kingsley Napley dated 4 November 2024.

10. It is common ground, however, that, given that the Company was the substantive defendant to the Creditors' winding up Petition, the costs order sought against Mr Hilton and Mr Welsh is analogous to a non-party costs order and the court should exercise its discretion in accordance with, or by analogy to, the principles that apply on the making of such an order (see *Threlfall v ECD Insight* [2014] 2 Costs LO 129, per Lewison LJ at [8]-[14]).

11. The jurisdiction to award costs against a non-party is found in sections 51(1) and 51(3) of the Senior Courts Act 1981 and is now enshrined in and supplemented by CPR 46.2.

12. The courts have repeatedly warned against overburdening cases of this kind with reference to decided cases and, given that the general principles are common ground, I need only to refer for present purposes to the oft-cited guidance in the case of *Goknur Gida Maddeleri Enerji Imalet Ithalat Ihracat Ticaret Ve Sanayi AS v Aytacli* [2021] EWCA Civ 1037 per Coulson LJ at [40]-[41] and to the very detailed recitation of the relevant principles in *Paper Mache Tiger Limited v Lee Mathews Workroom Property Limited* [2023] EWHC 338 (Comm) per John Kimbell KC (sitting as a Deputy High Court Judge) at [8]-[9]. I bear all of these principles firmly in mind in dealing with the application before me.

13. For present purposes, I note specifically that this is an exceptional jurisdiction in the sense that an order of this sort is not in the ordinary run of cases (see *Dymocks Franchise Systems (NSW) Property Limited v Todd* [2004] 1 WLR 2807 per Lord Brown at [25]), that it is highly fact-specific and that the only immutable principle is that the jurisdiction must be exercised justly (see *Deutsche Bank AG v Sebastian Holdings Inc* [2016] EWCA Civ 23 per Moore-Bick LJ at [62]).

14. The two central factual questions are, first, whether the non-party is "the real party" to the litigation, often determined in a case of this sort by reference to the question of whether the director was seeking to benefit personally from the litigation and, second, whether there is some other reason why it would be just to make the order, usually found in evidence of impropriety or bad faith on the part of the director in connection with the litigation (see *Goknur* at [41]). Depending on the facts, an affirmative answer to either of these questions will suffice to justify a non-party costs order. It is not necessary to satisfy both. Impropriety in this context was explained in *Goodwood Recoveries Limited v Breen* [2005] EWCA Civ 414 per Rix LJ at [59] by reference to *Dymocks* as including "the pursuit of speculative litigation".

15. The procedure to be undertaken by the court on an application of this kind is a summary procedure based on the evidence given and the facts found at trial together with an assessment of the behaviour of those involved in the proceedings (see *Deutsche Bank* at [17]). It was not suggested on behalf of Mr Hilton and Mr Welsh that it would not be fair for them, as parties to the proceedings who attended at the trial of the preliminary issue, to be bound by that evidence and by the facts found in the Judgment. They were entitled to participate in the trial and I gave Mr Welsh permission to make submissions at the hearing in January. It was also not suggested that this hearing should take place in any form other than as a summary determination based on the written evidence. Neither party has applied for cross-examination, and so I must determine any disputed issues of fact on the balance of probabilities.

Application of the law to the facts

Control of the Company's defence

16. It is accepted by Mr Hilton and Mr Welsh in their evidence that they controlled the Company's defence of the Petition. This could not sensibly have been contested, in my judgment. They used their majority on the Company's board of directors to instruct Hill Dickinson to conduct the Company's defence to the Petition, as well as their own defences. They filed joint points of defence with the Company, which were signed by them, and the only evidence served on behalf of the Company for the trial of the Petition were witness statements from them. All of these actions were taken against the wishes of Stanbreck Properties Ltd the third applicant in the Petition, 50% shareholder and director of the Company.

17. Furthermore, it appears that Mr Hilton and Mr Welsh were involved in funding the Company's defence as they have exhibited a draft bill from Hill Dickinson to their evidence in the sum of circa £77,000, which is said to be payable by Welton Capital Limited, a company that is owned and controlled by Mr Hilton and Mr Welsh.

Personal benefit

18. Nevertheless, Messrs Welsh and Hilton deny that they were seeking to benefit personally from the litigation. They maintain, in a nutshell, that crucially they believed, at least when the Petition was first issued, that the Company was solvent. Furthermore, they say that their continued defence of the Petition, even after the solvency of the Company may have become more questionable, was justified by their belief that a negotiated settlement with the Company's major creditors (which they were endeavouring to achieve in parallel with their defence of the Petition) would preserve the Company as a going concern and would result in a better outcome for the Company than a sale in liquidation.

19. However, having regard to the available evidence, my findings in the Judgment and the submissions I have heard today, including the valiant submissions of Mr Grandjouan, I do not accept the position adopted by Mr Welsh and Mr Hilton. I say that for the following main reasons.

20. First, there is ample evidence to support the proposition that Mr Welsh and Mr Hilton were acting in their own interests rather than in the best interests of the Company. Specifically:

(a) A transcript of a meeting in November 2022 (prior to the presentation of the Petition) attended by Mr Erlich, Mr Winegarten and Mr Welsh strongly suggests that (at least) Mr Welsh believed there to be a personal benefit in controlling the Company which he and Mr Hilton intended to capitalise on. By way of example, in the context of discussing the financial position of the Company, Mr Welsh comments to the effect that he is glad he and Mr Hilton have control "because otherwise we would be completely and utterly screwed". He also observes that "I have to look after my own interests as does Paul [Hilton] and as do you", pointing out that, if he were in the Creditors' position, he "would be thinking with a lender's hat on 'how do I get my money back?'". Having read the transcript in full, including specific passages to which my attention was drawn in argument by Mr Grandjouan, I reject the evidence in the joint witness statement to the effect that these observations have been taken out of context and were really intended to mean that the control exerted by Messrs Hilton and Welsh allowed them to take decisions for the benefit of the Company. This discussion concerned the potential for the Creditors and Messrs Hilton and Welsh to go their separate ways - there is a suggestion that the very substantial loans will be written off - and I agree with Mr Matthewson that, on balance, it is implicit in this discussion that any offer will be at a significant discount by comparison to the lending provided. I also agree with Mr Matthewson that paragraph 23(b) of the joint statement rather gives away the extent to which Messrs Hilton and Welsh were concerned for their own interests. Essentially, they appear to be eliding the interests of the Company with their own personal interests, which is obviously inappropriate.

(b) By defending the Petition, it is common ground that Mr Hilton and Mr Welsh each continued to receive directors' salaries of £60,000 per annum from the Company and £60,000 per annum from ICG, which salaries would have stopped had they conceded the petition. Further, there is evidence that they both received payments of £42,500 from the Company on 2 July 2024, although I was told on instructions during the hearing today that this figure in fact represents part of their 2022/2023 salaries. However, I note the submissions of Mr Matthewson in reply to the effect that there is a lack of clarity around whether this is so or not and I have no evidence on the point one way or the other. In any event, it is common ground that, by causing the Company to defend the Petition for 20 months, each of Mr Hilton and Mr Welsh personally benefited to the tune of £240,000. Mr Grandjouan submits that the receipt of salaries is not, on its own, an indicator that Messrs Hilton and Welsh were acting in their own best interests, and I accept that may be right. But, when combined with all of the other factors to which I shall refer in this judgment, I consider it to be of significance.

(c) By defending the Petition, it is also common ground that Mr Hilton and Mr Welsh were able to engage in various settlement discussions, all of which envisaged global settlements. First, they sought to sell their shares to the Creditors and then they sought to sell the Company and the loans to a third party. I have a considerable amount of evidence about these settlement discussions and I was addressed on them during the course of today at some length, but, for present purposes, I do not need to go into them in any detail. Suffice to say that they involve different parties, but that they all, without exception, included terms which were plainly advantageous to Messrs Hilton and Welsh personally, usually by reason of it being proposed that substantial payments would be made to them and that any claims against them

would be released. That they wished to gain something from these various prospective deals is not only evidenced by the proposed terms of the deals, but also by an email from Hill Dickinson at the time of the settlement negotiations with an unidentified third party purchaser in late 2023/early 2024 making clear that "My clients do, however, want something from the deal". On balance, that appears to have been their attitude throughout the course of the settlement negotiations. Messrs Hilton and Welsh admit in their joint witness statement that "[i]t was in our interests to either settle with the Petitioners (which we tried to do extensively) or alternatively to complete a deal with the Gluck Family Office". I note the reference there to "our interests". It appears to me that Mr Hilton and Mr Welsh were plainly concerned in these negotiations about their own interests, as Mr Welsh had indeed foreshadowed at the meeting in November 2022. Mr Grandjouan argues that these negotiations set the context for Mr Hilton and Mr Welsh's defence of the Petition and that they were entitled to take the view that the negotiations might result in an advantageous deal for the Company. I reject those submissions for reasons to which I shall return in a moment.

21. Second, and turning to Mr Hilton and Mr Welsh's case that they were at all times acting in what they believed to be the best interests of the Company, notwithstanding that what was in the Company's best interests may also have benefitted them, I reject that case. I do so primarily for the following reasons:

(a) At the heart of Mr Grandjouan's submissions is the contention that, while it is plain that Mr Hilton and Mr Welsh were mistaken as to the solvency of the Company, they were nevertheless honest in their belief that it was solvent. He points to the fact that directors defending a petition will not normally have the benefit of an expert report and that their assessment of solvency, particularly in a case such as this which depended upon whether the Company was insolvent on a balance sheet basis having regard to its liabilities falling due six years later, is inevitably impressionistic. He also says that Messrs Hilton and Welsh reasonably relied both on the information that they had available to them and on the advice of lawyers and professionals. On balance, I reject these submissions.

(b) At the centre of the Company's defence of the Petition signed by Mr Hilton and Mr Welsh was the assertion that the value of the Company's assets at 31 December 2029 was projected to be £91.3 million based on the estimated forecast returns from the detailed business plans of the Company's subsidiaries. However, these are the Business Plans to which I refer in paragraphs [40]-[43] of the Judgment where I said this:

> "40. …I have seen nothing in the Business Plans which enables me to conclude that there is any real prospect that the Company will be able to meet its liabilities in 2029. Given the Respondents' reliance upon the Business Plans, I should say a little more about them. I was taken through them at the hearing in detail by Mr Matthewson.
>
> 41. I accept Mr. Desai's evidence that the Business Plans do not provide a realistic or viable basis on which to draw any conclusions as to the likely value of the Company's assets in 2029. There is nothing to contradict that evidence, notwithstanding that the Respondents' defence relied almost entirely on their accuracy.

> 42. I also accept that the Business Plans (described as "illustrative" when they were provided after the Respondents became aware of the Petition), are out-of-date; that most, if not all, of the assumptions on which they were based have not come to fruition; that there has been no attempt to update them in the 20 months since they were created (and certainly no attempt to produce the 5-year plan in Q4 2023, or any time thereafter, which they refer to as being a necessary "stress test"). They are therefore both highly speculative and wildly optimistic. There is no evidence that the restructuring that was envisaged in the Business Plans has been carried out or that it is realistic to suppose that it will be carried out in the future".

At paragraph [43] I went on to say this:

> "I draw the inference, as I was invited to do, that the Business Plans sent at the end of May 2023 were prepared with the specific intention in mind of seeking to advance the defence of the Petition and thus to stave off the winding-up of the Company. They appear to bear little resemblance to reality and they certainly do not provide a reasonable basis upon which to assess the likely value of the Company's assets in December 2029".

It is fair to say that Mr Hilton and Mr Welsh now accept that the Business Plans were indeed produced in response to the Petition.

(c) Mr Hilton and Mr Welsh spent some considerable time in their evidence for this hearing seeking to go behind some of these findings, but there is no scope for them to do so, as Mr Grandjouan realistically accepts. They were parties to the litigation, attended the hearing and had the opportunity to make submissions. My findings about the Business Plans on their own strongly support the proposition that Mr Hilton and Mr Welsh did not genuinely believe that the Company would be able to repay the Cresta and Luxor loans when they fell due. Mr Hilton and Mr Welsh give no evidence in their joint statement that they ever considered the realism or viability of the Business Plans, notwithstanding that they quite obviously did not provide a reasonable basis for assessing the likely value of the Company's assets in 2029. As directors, they should have recognised that.

(d) I do not consider the assertion that Mr Hilton and Mr Welsh simply relied upon Mr Whitton's "bullish" projections for the Subsidiary Companies to be anywhere close to sufficient to exonerate them. They knew that the Business Plans had been prepared in an attempt to stave off the Petition and they knew that earlier forecasts had been much less optimistic. They appear to have taken no steps whatever to obtain up-to-date information on the Business Plans in the months after they were provided, just as they appear to have taken no steps to interrogate those plans. There is no explanation for this in their witness statements. The fact that, as they now contend, the Business Plans had some basis in earlier documents produced by Mr Whitton (including an Investor Deck prepared in November 2022 which was not disclosed in the proceedings) is not sufficient to evidence an honest belief in the accuracy of the Business Plans when they were provided. As is clear from the earlier forecasts, including the Investor Deck that I was taken to today, there is nothing in those forecasts that would support unquestioning reliance on the Business Plans, which were, as I have already found, wildly optimistic by comparison with anything that went before. The Investor Deck has not changed

my view in that regard. Messrs Hilton and Welsh were directors and had a duty to look at the Business Plans with a questioning eye. There remains no explanation as to why Messrs Hilton and Welsh continued to rely on those Business Plans for many months during the course of their defence of the Petition, including in their witness statements for trial and in their defence all the way to the first day of that trial.

(e) Mr Grandjouan relied on two documents evidencing the fact that a particular property in Romford had been valued at in excess of £40 million as supporting Mr Hilton and Mr Welsh's genuine belief in the solvency of the Company, but it is Mr Hilton and Mr Welsh's own evidence in their joint statement that this property was already subject to secured lending of circa £32.2 million. If this figure is removed from the £40 million-odd that is identified in the valuation, then there could only have been reliance, at most, on a sum of circa £9 million - even assuming that there was any reliance on this valuation at the time. That sum is nowhere near what would be required to provide comfort that the Company was solvent.

(f) Furthermore, I rely on the findings that I made at paragraph 45 of the judgment, as follows:

> "…I accept Mr. Erlich's evidence in his witness statement of the discussion he had with Mr. Welsh in November 2022 and the proposal he received from Mr. Whitton in February 2024. On balance, this evidence tends to support, in my judgment, Mr. Matthewson's submission that Mr. Welsh and Mr. Whitton were both of the view that the Company would not be able to repay the Cresta and Luxor Loans when they fell due".

Again, there is no scope to go behind that finding.

(g) Further and in any event, as the Petitioners point out, I now have significantly more evidence of 'Without Prejudice' and 'Without Prejudice save as to Costs' discussions between the parties during the course of the proceedings and this is supportive of the findings I made in the judgment. By way of example, the settlement discussions from August to November 2023 involved discussions about Mr Hilton and Mr Welsh giving a warranty that there was a combined value of £10 million in the Company's and MPBF's subsidiaries. That Mr Welsh and Mr Hilton were not prepared to warrant a value far higher than this, and that they appeared to regard this as a concession that justified other terms being altered in their favour, appears to me strongly to support the proposition that they did not believe there to be any realistic prospect of Cresta and Luxor being paid in full, notwithstanding Mr Grandjouan's arguments to the contrary. I also note that these discussions were taking place only a week after the filing of the defence in the Petition which valued the Company's assets at circa £30 million. On the available evidence, I cannot accept that Mr Hilton and Mr Welsh had any genuine belief in that value at the time, and these settlement discussions appear to me to show, on balance, that they were contemplating obtaining a valuation of the Company, but did not do so. They have not explained why they did not do so or how they could have arrived at the figure that was included in the defence absent such a valuation.

(h) Finally, the joint witness statement seeks to rely heavily upon professional advice that Mr Hilton and Mr Welsh say they received, the implication being that such

advice confirmed the realism of the Business Plans or the solvency of the Company. However, they have not disclosed any professional advice to that effect and have merely said that the advice they were given by Hill Dickinson and by counsel was "not in writing". In the circumstances, I cannot possibly infer that their decision to take the defence of the Petition all the way to trial was a reasonable decision made in reliance upon legal or other professional advice, much less that such a decision was in the best interests of the Company. Mr Grandjouan at one point in his submissions suggested that Mr Hilton and Mr Welsh had received bad advice from Hill Dickinson, but that would be a matter between them and Hill Dickinson. It does not impact on my assessment.

22. Third, my findings above appear to me to make clear not only that Mr Hilton and Mr Welsh were acting at all times for their own purposes and ignoring the best interests of the Company, but also that they were doing so with impropriety, at least in the sense that they were pursuing a highly speculative defence of the proceedings in circumstances where they had no genuine belief in the solvency of the Company. Aside from the fact that I consider, on balance, that Mr Hilton and Mr Welsh were both of the view that the Company would be unable to pay the Luxor and Cresta loans when they fell due, it also appears to me that Mr Hilton and Mr Welsh acted unreasonably in the litigation without any genuine intention of defending the case at trial, thereby causing the Creditors to incur very significant costs (knowing full well that this would be the case, given that the litigation was subject to Costs Budgeting). In particular:

    (a) They failed to disclose up-to-date financial information for the Company's Subsidiaries, thereby causing the Creditors' expert to incur significantly more costs than might otherwise be the case.

    (b) As I have already trailed, they failed to serve any valuation expert evidence in August 2024 (see the Judgment at [16]) and then failed to serve any accounting expert evidence in October 2024 (see the Judgment at [18]) despite the fact that their case depended upon the Business Plans being held to be realistic. As Mr Hughes confirms in his evidence, they had repeatedly asserted, both personally and through Hill Dickinson, that the expert evidence was key to the determination of the proceedings. They could not sensibly have thought that the Grunberg letter to which I refer in the Judgment would assist them at trial (see the Judgment at [19]). That letter appears to have been based purely on the Business Plans themselves without any analysis of those plans. There is no evidence that Mr Hilton and Mr Welsh obtained any other expert evidence which could have provided them with comfort.

    (c) In the letter from Kingsley Napley dated 4 November 2024 (see the Judgment at [21]), Kingsley Napley queried how Mr Hilton and Mr Welsh could continue with their defence of the Petition in the absence of accounting evidence, but, shortly thereafter, Hill Dickinson came off the record and Mr Hilton and Mr Welsh nevertheless took the matter all the way to trial. They concede in their evidence that perhaps they should not have continued to defend the Petition after November 2024. By that stage, there can have been no question whatever that it was patently not in the interests of the Company to continue to defend a Petition without expert evidence or legal representation.

(d) In their evidence, Mr Hilton and Mr Welsh suggest that they ran out of money to defend the Petition, but that does not explain why they continued to run the defence, absent expert evidence or legal assistance, to trial when such a course was plainly not in the best interests of the Company. In any event, on balance, I do not accept that they ran out of money, given the submissions I have heard from Mr Matthewson today as to other available potential sources of money.

(e) One of the final things that Hill Dickinson did as solicitors for the Company before coming off the record was to confirm, no doubt, on the instructions of Messrs Welsh and Hilton, that the respondents intended to cross-examine the Creditors' witnesses at trial. Although Mr Hilton and Mr Welsh subsequently, in January 2025, admitted the report of one of the expert valuers, all of the Creditors' other witnesses had to prepare fully for what appeared to be, and what they reasonably expected would be, a contested trial.

(f) But Mr Hilton and Mr Welsh then withdrew the Company's defence to the Petition on the first day of the trial after the Creditors had incurred all of their legal costs.

(g) I reject the suggestion made by Mr Grandjouan that their continued defence of the Petition until the last possible minute was for the benefit of the Company because "any alternative imaginable" (as they say in their evidence) would have been preferable to winding-up, and that they continued to believe that they could achieve a settlement right up to the hearing. I agree with the creditors that it is wrong to suppose that a winding-up order is always contrary to the Company's interests (see the case of *BTI 2014 LLC v Sequana SA* [2024] AC 211 per Lord Reed PSC at [11]). A company's interests, particularly where that company is hopelessly insolvent in the sense that liquidation is inevitable (see [165] of *Sequana* per Lord Briggs), as appears to have been the case here, are to be treated as equivalent to the interests of its creditors. Here, Cresta and Luxor had "the most skin in the game" (see *Sequana* at [176] per Lord Briggs). Continuing to defend the Petition without seeking the agreement of the Creditors or the third shareholder, Stanbreck, and attempting to negotiate deals designed, at least in part, to bring personal benefit while, at the same time, running a hopeless defence to the Petition and causing the Creditors to incur very substantial costs, was plainly not in the best interests of the Company. I agree with Mr Matthewson that, having regard to all of the evidence and on balance, Mr Hilton and Mr Welsh were only seeking to draw out the defence of the Petition in order to leverage a settlement and achieve a substantial personal benefit. I do not accept that this was a legitimate means to rescue the Company, and I note that Mr Grandjouan did not address the fact that Mr Hilton and Mr Welsh were receiving a personal benefit in each of the proposed settlement deals. Importantly, in my judgment, as Mr Matthewson pointed out, Mr Hilton and Mr Welsh did not seek the Creditors' consent to their defence of the Petition so as to enable a deal to be done. If that had genuinely been their wish in the interests of the Company, they could and would, in my judgment, have made that request. The Creditors were not in any way condoning the continued defence, as the correspondence confirms, and I find on balance that, insofar as the Petition was defended because Mr Hilton and Mr Welsh did not wish to 'scupper' a deal, as Mr Grandjouan submitted, they were concerned about scuppering a deal that they considered to be for their personal benefit, not for the benefit of the Company.

(h) In fact, there has plainly been no benefit to the Company of defending the Petition for 20 months, only for it to be withdrawn on the first day of the trial. Significant costs have been incurred, running to in excess of £1 million on the Creditors' side, and the value of the Company's Subsidiaries appears to have been eroded, as Mr Hilton and Mr Welsh accept in their evidence. Indeed, during his submissions, Mr Grandjouan very realistically advanced an alternative case to the effect that there would have come a time in the defence of the Petition when it should no longer have been defended because "any genuine belief in the solvency of the Company becomes more difficult to sustain". That time, he submitted, was three months before the service of the expert evidence, i.e. May 2024. I have no doubt that he is right that the defence should have been abandoned by this stage, but I am afraid that I consider on balance for all the reasons I have given that there was, in fact, never any genuine belief in the solvency of the Company and so the defence should not have been advanced in the first place.

23. In all the circumstances, I consider Mr Hilton and Mr Welsh to have been the real parties in the litigation. I agree that their conduct infected the conduct of the proceedings and I consider on balance that they were, at all times, operating in their own best interests and without appropriate propriety, engaging, at best, in a highly speculative defence of the Petition. It does not now lie in their mouths to blame the Petitioners for engaging in settlement negotiations, as Mr Grandjouan suggested in his submissions. They were entitled to explore settlement, but that did not obviate the need for Mr Hilton and Mr Welsh to act properly in responding to the Petition in the best interests of the Company.

24. For all those reasons, I am going to make the order sought in relation to the payment by Mr Hilton and Mr Welsh of the Petitioners' costs of the Petition and of the other petitions which were adjourned pending the outcome of the Petition. I am also going to order, as Mr Matthewson invites me to do, that Mr Hilton and Mr Welsh pay the Company's costs of the Petition. It was not disputed by Mr Grandjouan that I have jurisdiction to make such an order and that it would naturally flow from the order that I have just made as to the payment of the Petitioners' costs of the Petition.

25. The Petitioners also seek what is effectively an order, in the event of non-payment by Mr Hilton and Mr Welsh, to recover their costs out of the assets of the Company. Again, I did not understand this to be disputed by Mr Grandjouan, subject to the wording of the order. However, Mr Grandjouan makes the point, with which I agree, that it is not appropriate now for the court to make a secondary order for costs to be paid to the Company by Mr Hilton and Mr Welsh in such circumstances. That appears to me to be a matter for the liquidators in due course. The Company is not represented before me and has not sought to make any applications, expressing itself at all times to be neutral.

26. Accordingly, I will not make an order quite in the terms of paragraph 3 of the draft order, and that will need to be discussed with counsel in a moment. I shall now also invite the parties to make submissions on the remaining issues that arise in the application.

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(This Judgment has been approved by the Judge.)

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