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Insolvency judge on appeal orders IVA of disgraced solicitor to be revoked

*Joseph Golstein v. Colin Bishop and Nicholas Barnett
(As Supervisor of Mr Bishop's IVA)
[2016] EWHC 2804 (Ch)*

Article by David Bowden

Executive speed read summary

Mr Golstein and Mr Bishop were 2 solicitors in partnership called BG Solicitors for 3 years until 2010. The partners then had an acrimonious falling out. Mr Bishop was struck off by the Solicitor's Disciplinary Tribunal. A court case between the 2 partners was resolved in Mr Golstein's favour and an appeal was dismissed by the Court of Appeal. In partnership account proceedings Mr Bishop was ordered to pay his former partner £500,000 and £300,000 costs. Mr Bishop was insolvent and proposed an IVA. This was passed at a creditor's meeting but the validity of this was challenged by Mr Golstein. Initially a district judge dismissed this challenge but this was overturned by Warren J on appeal. At a hearing to determine a remedy, Warren J said there were material irregularities at the creditor's meeting and no special circumstances were made out by the debtor under s262 of the Insolvency Act 1986. The decision at the creditor's meeting to approve the IVA would be revoked allowing Mr Golstein to petition for Mr Bishop's bankruptcy instead.

Joseph Golstein v. Colin Bishop and Nicholas Barnett (As Supervisor of Mr Bishop's IVA)
[2016] EWHC 2804 (Ch) 7 November 2016
High Court of Justice, Chancery Division (Warren J)

What were the IVA proposals in May 2012?

These were the debtor's proposals voted on at the creditor's meeting on 31 May 2012.

In favour

Richard Anthony & Co	£5,400
CBL	£88,092
Margaret Ida Bishop	£18,656
Siemens Financial Services	£6,866
Sub-total	£118,614

Against

Mr Golstein (contingent claims)	£1
Quinn Insurance Ltd	£1
Dr Qureshi	£5,000
Sub-total	£5,002

Not voting

BT	£1,497
SDT Fine	£5,000
SRA Costs	£13,115
ING Lease (UK)	£5,760
Sub-total	£25,372

TOTAL	£148,988
Percentage by value voting in favour:	79.6%

What does the Insolvency Act 1986 say?

Section 262 of the Insolvency Act 1986 ('IA') makes provisions for challenging the decision made at a creditor's meeting where an individual voluntary arrangement ('IVA') proposal has been approved. It says as follows.

'262 Challenge of meeting's decision.

- (1) *Subject to this section, an application to the court may be made, by any of the persons specified below, on one or both of the following grounds, namely—*
 - (a) *that a voluntary arrangement approved by a creditors' meeting summoned under section 257 unfairly prejudices the interests of a creditor of the debtor;*
 - (b) *that there has been some material irregularity at or in relation to such a meeting.*
- (2) *The persons who may apply under this section are—*
 - (a) *the debtor;*
 - (b) *a person who—*
 - (i) *was entitled, in accordance with the rules, to vote at the creditors' meeting, or*
 - (ii) *would have been so entitled if he had had notice of it*
 - (c) *the nominee (or his replacement under section 256(3), 256A(4) or 258(3)); and*
 - (d) *if the debtor is an undischarged bankrupt, the trustee of his estate or the official receiver.*
-
- (4) *Where on an application under this section the court is satisfied as to either of the grounds mentioned in subsection (1), it may do one or both of the following, namely—*
 - (a) *revoke or suspend any approval given by the meeting;*
 - (b) *give a direction to any person for the summoning of a further meeting of the debtor's creditors to consider any revised proposal he may make or, in a case falling within subsection (1)(b), to reconsider his original proposal.'*

What happened in the Solicitor's Disciplinary Tribunal?

By its decision dated 4 September 2012 (**Case No. 10936-2012**) the SDT ordered that Mr Bishop be struck off the roll of solicitors and pay the SRA's costs of the proceedings assessed at £15,000. Mr Bishop had previously appeared before the SDT on 17 May 2011 when a penalty of £5,000 was imposed.

What happened in the case before Deputy Judge Christopher Nugee QC in May 2013?

Mr Golstein and Mr Bishop were in partnership together as solicitors under the name B & G Solicitors from 1 October 2007 until 30 June 2010. Each claimed various reliefs arising out of the partnership. They were agreed that dissolution accounts had to be taken but there were 15 issues which had to be decided either before the accounts were taken or in any event.

The deputy judge found **[2013] EWHC 881 (Ch)** that '*neither party found the experience of being in partnership together a happy one or as successful as they had hoped. Among other things, Mr Golstein, who had hoped for a warm personal relationship with Mr Bishop, found him aloof and unfriendly, rebuffing his suggestions that they should socialise with their wives after hours*'.

On the 1st issue as to whether Mr Golstein represented to Mr Bishop at the time of the merger negotiations, that he would be able to maintain his existing fee income of £240,000 afterwards, the judge ruled that '*although Mr Golstein said he hoped or expected to maintain his fee income at £240,000 after the merger he gave no assurance to that effect, and his statement did not amount to an actionable representation*'. Other issues were similarly broadly determined in Mr Golstein's favour.

What happened in the Court of Appeal in February 2014?

On 5 February 2014 Lord Justice Briggs handed down the reserved judgement of the Court of Appeal **[2014] EWCA Civ 10** in which the appeal of Mr Bishop was dismissed. Briggs LJ ruled that what he saw '*were symptoms of a more fundamental failure by Mr. Bishop to comply with his partnership duties toward Mr Golstein*'.

What decision did District Judge Hart make in December 2015?

District Judge Hart held a 2 day hearing in November 2015 in Central London County Court. She had to determine an application made by Mr Golstein for revocation of an approval decision dated 31 May 2012. That decision approved the proposal made by Mr Bishop and enabled him to enter into an IVA. In her judgement dated 21 December 2015 she refused Mr Golstein's application.

What ruling did Warren J make in September 2016

In his judgement **[2016] EWHC 2187 (Ch)** dated 2 September 2016, Mr Justice Warren allowed 1 ground of Mr Golstein's appeal and overturned the decision of DJ Hart. Warren J ruled that there was no material irregularity at the creditor's meeting but ruled that there had been a '*material non-disclosure by Mr Bishop in his proposal*'. Warren J adjourned the question of remedy should to a further hearing.

What was the basis of the latest hearing before Warren J on 3 November 2016?

This hearing was to determine what remedy, if any, should be awarded to Mr Golstein consequent on this earlier '*material non-disclosure*' ruling.

What submissions did the parties make?

Mr Golstein as creditor submitted that the approval given at the creditor's meeting to the IVA should be revoked. The effect of this is that Mr Bishop's creditors including Mr Golstein would be able to petition for his bankruptcy. Mr Bishop as debtor submitted that no relief should be granted at all. Finally the IVA supervisor adopted a neutral stance before the judge.

What were the 4 issues that Warren J was required to rule on?

Warren J said there were 4 areas of disagreement he was required to resolve:

- Had there been a '*substantial delay*' in resolving the IA s262 application such that Mr Golstein can no longer obtain relief?
- Is it impossible to revert to the *status quo* that existed prior to the creditor's meeting?
- Has Mr Golstein's conduct resulted in the incurring of significant unnecessary costs?
- Had Mr Bishop changed his position to his detriment by relying on the validity of the IVA as approved at the creditor's meeting?

What did Warren J rule on delay?

Warren J went through the history of the separate action between the 2 former partners to resolve the accounts of the business in which Mr Golstein obtained judgement against Mr Bishop for £500,000 and a

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costs order of £300,000. The submissions of Mr Bishop that Mr Golstein's 'whole approach has been to delay the hearing of the section 262 application' were rejected. Warren J ruled that 'it cannot be said that Mr Golstein was acting unreasonably or that his conduct was an abuse of process'.

What did Warren J rule on prejudice and reversion to the status quo?

Warren J was brusque on this ruling that 'I can detect no prejudice to him' (that is to Mr Bishop). On reversion to the status quo, Warren J was equally dismissive stating 'it rings slightly hollow for a person whose conduct has given rise to material irregularity to complain, that those adversely affected should have no remedy because he cannot be put back into the position in which he would have been, if approval had never been given to the IVA in the first place.'

What did Warren J rule on whether significant unnecessary costs had been incurred?

Whilst Warren J noted that Mr Barnett had complained to Mr Golstein's lawyers that he was running up costs, he also noted that 'Mr Golstein and his advisers ceased corresponding until an appeal by Br Bishop to the Court of Appeal had been dealt with'. For this reason Warren J ruled that:

'I do not consider that it is established that Mr Golstein has acted in a way in relation to the incurring of costs and expense by Mr Barnett which has any impact on the way in which I should exercise my discretion as to the remedy to grant.'

What did Warren J rule on change of position?

Warren J noted that

'The only change of position which Mr Bishop can realistically rely on is the fact (and amount) of his contribution to the IVA: this is not a case where he has been making periodic payments. ... It is not, I think, that the one-off payment of itself results in a relevant change of position (if it were, that would be so in every case of challenge under section 262); rather, it is the manner in which it is alleged that the payment has been spent by Mr Barnett.'

Warren J ruled that this submission carried 'very little weight at all'.

What was Warren J's conclusion on this appeal?

This was very clear and plain with Warren J stating that he had 'no doubt' that he should exercise his discretion 'by making an order under section 262(4)(a) revoking the approval of the IVA'. He went on to note that:

'it would be a great injustice to Mr Golstein if no remedy were available to him particularly given the seriousness of Mr Bishop's conduct and the need for a proper investigation of his financial position. The starting point, in my view, is that ordinarily an order should be made under section 262(4) where material irregularity is established although special circumstances may be enough to dissuade the court from making an order.'

On this Warren J ruled that Mr Bishop had 'not established special circumstances sufficient to persuade me to exercise my discretion differently'. In relation to the position of other IVA creditors, Warren J said there was 'certainly no detriment to them in revoking the approval since they stand to recover very little, if anything, from the IVA. I incline to the view that revocation would actually be in their interests since their rights as creditors will revert to them.'

What additional orders did Warren J make?

Warren J made 3 additional orders:

- He made an order validating the acts of the IVA supervisor and also validating the IVA's supervisor's fees. However he mandated that this order be served on all creditors with a provision that they have 'liberty to apply to vary it or set it aside'.
- As to releasing £4500 which the IVA supervisor held in case he needed to petition for Mr Bishop's bankruptcy, he ordered that he 'be at liberty to pay to Mr Golstein such sum as he agrees' but said in default of agreement that such costs should be assessed by a court officer.
- He was willing to dismiss with costs the IVA supervisor's appeal from the order of DJ Hart because 'it will no longer serve any purpose' but he said he would stay it instead noting that there may be an appeal from his own decision.

8 November 2016

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