Neutral Citation Number: [2022] EWHC 331 (Comm)

Case No: CL-2022-000055

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 16/02/2022

Before :

MR JUSTICE FOXTON

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Between :

MI Squared Limited **Cla**

- and -

(1) **Jeremy King**

(2) **Christopher Corbin**

(3) **Zuleika Fennell**

Defe

(4) **Robert Holland**

(5) **Corbin & King Limited**

- and -

CK Opportunities Fund I **Interested Party**

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CK OPPORTUNITIES FUND I, LP

Fraser Campbell (instructed by **Mishcon de Reya LLP**) for the **Claimant**

Nigel Dougherty (instructed by **Rosenblatt**) for the **First to Fourth Defendants**

Ryan Perkins (instructed by **Milbank)** for **CK Opportunities Fund I**

Hearing dates: 15 February 2022

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE FOXTON

“Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties’ representatives by email and release to Bailii. The date and time for hand-down is deemed to be 14:00 on 16 February 2022.”

Mr Justice Foxton

1.
This is an application by the Claimant (**MI Squared**) under s.44 of the Arbitration Act 1996 (**the 1996 Act**) for urgent injunctive relief against the First to Fourth Defendants (**the Directors**) who are all directors of the Fifth Defendant (**the Company**) or of various of its subsidiaries. The injunction is sought to prevent the Directors, without the prior written approval of MI Squared, from paying off any indebtedness of the Company or its subsidiaries, incurring any new indebtedness or encumbering any assets of the Company or its subsidiaries.

2.
The application has been brought on, argued and determined under considerable pressure of time.

3.
The application arises against the following background. In 2017, MI Squared became the majority (74%) shareholder of the Company as part of a transaction which involved:

i)
MI Squared, the Directors and the Company entering into a Shareholders Agreement dated 18 December 2017 (**the SHA**); and

ii)
A company connected to MI Squared, Minor Hotel Group MEA DMCC (**MHG**) making a secured loan to the Company, which was guaranteed by the Company’s subsidiaries, in the amount of £33,697,076.31 (**the MHG Loan**).

I will refer to the group of which MI Squared and MHG form part as **the Minor Group**.

4.
I should also explain a little bit more about the corporate structure:

i)
As I have stated, MI Squared owns 74% of the shares of the Company, the remaining shares being owned by the Directors.

ii)
The First to Third Defendants are directors of the Company.

iii)
The Company operates as the group holding company, and is the 100% owner of an intermediate holding company called Corbin & King Holdings Limited (**CKHL**).

iv)
The First to Third Defendants are directors of CKHL.

v)

CKHL owns a series of operating subsidiaries (**the Operating Subsidiaries**) each of which runs a distinct high-end dining business. The Fourth Defendant in combination with various of the First to Third Defendants are directors of those Operating Subsidiaries.

vi)
The MHG Loan is guaranteed both by CKHL and the Operating Subsidiaries.

vii)
Neither CKHL nor the Operating Subsidiaries are parties to the SHA.

5.
There has been a substantial falling out between MI Squared and the First to Fourth Defendants. I am told that the Directors issued an unfair prejudice petition against MI Squared which is currently stayed. More pertinently for present purposes:

i)
MHG has demanded repayment of the secured loan it made from the Company, CKHL and the Operating Subsidiaries.

ii)
In response, the First and Third Defendants applied for insolvency moratoria in respect of both the Company and various subsidiaries, in what appears to have been an attempt to stave off the appointment by MHG of administrators over those entities following non-payment of the MHG Loan.

iii)
The application for a moratorium in relation to the Company has since been withdrawn on the basis that it was not (as it had purported to be) made on the application of all the directors of the Company (only the First to Third Defendants).

iv)
On 25 January 2022, MHG appointed Mr Rowley and Mr Corfield of FRP Advisory as administrators of the Company, which is now subject to Schedule B1 of the Insolvency Act 1986 (**the 1986 Act**).

v)
The application for moratoria in relation to the subsidiaries has been the subject of a contested hearing before Sir Alistair Norris in the Chancery Division, in which judgment is awaited. For the moment, CKHL and the key Operating Subsidiaries are subject to moratoria under Part A1 of the 1986 Act.

vi)
On 10 February 2022, the solicitors for the Directors informed MI Squared and Sir Alistair Norris that funds were available to repay the debt due to MHG, such that MHG's locus standi to appoint administrators was shortly to fall away.

vii)
That information led MI Squared to suspect that the raising of the funds and their application to discharge the debt due to MHG would involve breaches of the SHA, and to seek urgent relief.

6.
The evidence before me as to the source and purpose of the funding said to be available to discharge the MHG debt (**the Proposed New Loan**) is as follows:

i)
The source of the Proposed New Loan is CK Opportunities Fund 1 LLP, which is managed by Knighthead Capital Management LLC and Certares Capital Management LLC (**the Fund**).

ii)
The Fund is providing the Proposed New Loan to CKHL as borrower, for the purpose of discharging CKHL's liability (and thereby the Company and Operating Subsidiaries' liability) to MHG in respect of the MHG Loan and also to repay loans of £4m to HSBC and a debt of £600,000 to the landlord of one of the Operating Subsidiary's premises, Wolseley Café at Bicester Village.

iii)
The Proposed New Loan is at a lower interest rate and on more borrower-friendly terms than the MHG Loan. In particular, interest will be capitalised rather than being required to be paid in cash; there are no financial covenants; there is no provision for a "cash sweep"; there are no mandatory prepayment provisions and very few information undertakings.

iv)
The Proposed New Loan is being secured by Group assets.

The jurisdictional framework

7.
As I have explained, MI Squared brings this application under s.44 of the Arbitration Act 1996. That is because clause 33(b) of the SHA contains an LCIA arbitration agreement. Section 44(3) of the 1996 Act gives the Court the power to make an order in favour of a proposed party to arbitral proceedings if the case is one of "urgency". There was no dispute that the requisite urgency was present in this case, and I therefore say no more about that particular issue.

8.
The principles applicable to the determination of any application under s 44 of the 1996 Act are the same as those applicable to the grant of an injunction under s 37(1) of the Senior Courts Act 1981: DP World Djibouti FZCO v Port de Djibouti S.A. [2018] EWHC 2340 (Comm) at [48] (Bryan J).

9.
Ordinarily, in an application such as the present, the Court must apply the principles set out in American Cyanamid v Ethicon [1975] 1 AC 396 to determine the application under s 44(3) of the 1996 Act. As is well known, that involves a three-fold test:

i)
First, is there a serious issue to be tried;

ii)
Second, would damages be an adequate remedy for the applicant if the injunction were refused; and

iii)
Third, does the balance of convenience favour the grant of the interim injunction.

10.
However, in cases in which the decision whether or not to grant an injunction will effectively be determinative of the application, the court will look more closely at the relative merits of the parties' positions, rather than simply asking whether the applicant has shown a serious issue to be tried. I was referred by Mr Dougherty for the Directors to a passage in Gee on Commercial Injunctions (7th) at

[2-024(1)] stating that the court should not apply the American Cyanamid merits test when “the result of the application for an interim injunction will in effect conclude the litigation”. Gee notes that “if the dispute will in substance be effectively determined by the decision on the interim injunction, there should be some assessment of the claimant’s prospects at trial”, which is likely to be the case “where an interim injunction would give the claimant all or substantially all of the relief claimed by way of final injunction”.

11.
It was my understanding that Mr Campbell accepted that the effect of the decision to grant or not to grant an injunction in this case would be sufficiently determinative in practice to require the court to move beyond the “serious issue to be tried” test, and to have regard to the relative merits of the competing arguments. However, he stressed (and I accept) that the court should not conduct a mini trial. In any event, I am satisfied that the practical effect of the decision which I have taken here is likely to be effectively determinative of the issues at stake. A decision not to grant the injunction will involve CKHL and the Operating Subsidiaries assuming the liabilities arising under the Proposed New Loan. Granting the injunction will lead to the administration of CKHL and the Operating Subsidiaries, and the rejection of the Proposed New Loan. In these circumstances, I have “taken account” of the relative merits of the arguments as they presently appear, having regard to the guidance given in Forse v Secarma Ltd [2019] EWCA Civ 215, [34].

The terms of the SHA

12.
Clause 3(a) of the SHA provides as follows:

“The Company hereby undertakes to the Majority Shareholder that, save with the prior approval of the Majority Shareholder, it shall not take, and shall procure that no Group Company takes, any of the actions set out in Schedule 1 (Majority Shareholder Approval Matters)… and each Founder and Employee Shareholder shall exercise or refrain from exercising, to the extent that each such Founder or Employee Shareholder is lawfully able to do so (and, if applicable taking into account his fiduciary duties to the extent exercisable in his capacity as a director of the Company or any other member of the Group) all voting rights and powers of control available to him in relation to the Company (as applicable) to procure that, save with the prior written approval of the Majority Shareholder, neither the Company nor any other member of the Group shall take any of the actions set out in Schedule 1 (Majority Shareholder Approval Matters) unless otherwise permitted under this Agreement.”

13.
Schedule 1 of the SHA sets out various matters for which Majority Shareholder approval is required, and MI Squared contends that entry into the Proposed New Loan engages paragraphs 11, 12, 16 and 24 of that schedule. While the Fund argued that these provisions were not engaged by the Proposed New Loan, Mr Dougherty did not seek to raise this point on behalf of the Directors, and I heard no argument on it. For present purposes, I am satisfied that the relative merits of that particular issue are with MI Squared (who requires only one of the relevant paragraphs to be engaged).

14.
The Fund raised a further issue of construction, also not raised by the Directors, to the effect that the obligations assumed by the Directors under clause 3(a) of the SHA did not extend to powers the Directors enjoyed as directors of CKHL or the Operating Subsidiaries (as opposed to their powers as Directors of the Company which are presently in abeyance after the Company was placed into administration).

15.
On this issue I am also satisfied that the relative merits favour MI Squared:

i)
I accept that clause 3(a) of the SHA refers to "all voting rights and powers of control available to him in relation to the Company". However, the words "in relation to", particularly when applied to a holding company, are at least capable of applying to powers held as directors of wholly owned subsidiaries or their wholly owned subsidiaries.

ii)
By contrast, the words "to the extent that each such Founder or Employee Shareholder is lawfully able to do so (and, if applicable taking into account his fiduciary duties to the extent exercisable in his capacity as a director of the Company or any other member of the Group)" which immediately precede and qualify the words considered in the preceding sub-paragraph expressly contemplate that powers in question may be those exercised by the Director as a director of an entity other than the Company.

iii)
MI Squared's argument is further supported by the terms of clause 15(b) of the SHA which provides that "an undertaking by a Party not to do any act or thing includes an undertaking not to allow, cause or assist the doing of that act and to exercise all rights of control over the affairs of any other Person which that Person is lawfully and reasonably able to exercise (directly or indirectly) in order to secure the performance of that undertaking".

The duties owed by the Directors

16.
It is clear that when a company is either insolvent or is likely to become insolvent, the duty of the directors to act in the interests of the members of the company is supplanted by a duty to act in the interests of the creditors (BTI 2014 LLC v Sequana SA [2019] EWCA Civ 112). It is also clear that directors of a company in a group must act in the best interests of the company whose affairs they are managing, rather than the group of which it forms part: Charterbridge Corporation Ltd v Lloyds Bank Ltd [1970] Ch 162.

17.
Directors owe a duty to exercise their powers for the purpose for which they are conferred (s.171 of the Companies Act 2006); to exercise the powers in what the directors consider in good faith to be likely to promote the success of the company for the benefit of the members as a whole (s.172, an obligation qualified by the Sequana duty when it arises); a duty to exercise independent judgment (s. 173) and a duty to exercise reasonable skill and care (s.174).

18.
The test of whether the director has acted in the best interests of the company is a subjective one. In Regentcress Plc v Cohen [2001] 2 BCLC 80, at [120], Jonathan Parker J. stated:

"The duty imposed on directors to act bona fide in the interests of the company is a subjective one… The question is not whether, viewed objectively by the court, the particular act or omission which is challenged was in fact in the interests of the company; still less is the question whether the court, had it been in the position of the director at the relevant time, might have acted differently. Rather, the question is whether the director honestly believed that his act or omission was in the interests of the

company. The issue is as to the director's state of mind. No doubt, where it is clear that the act or omission under challenge resulted in substantial detriment to the company, the director will have a harder task persuading the court that he honestly believed it to be in the company's interest; but that does not detract from the subjective nature of the test."

19.
Mr Campbell accepts that the effect of clause 3(a) is that the promise made by the Directors to refrain from exercising their powers in relation to Schedule 1 matters without the approval of MI Squared is qualified ("the Qualification") by the words: "lawfully able … (and, if applicable taking into account his fiduciary duties to the extent exercisable in his capacity as a director of the Company or any other member of the Group)". It is to be noted that the obligation under clause 15(b) is also qualified (by the words "lawfully and reasonably").

20.
Mr Campbell submits that the effect of this clause is that it is only in cases in which the Directors could only properly form the view that their fiduciary duties required them to take a particular Schedule 1 step (or, as he put it, where they were "mandated" to take that particular step) that the Qualification applies. In this case he submits:

i)
That there is no sufficient evidence that, acting pursuant to their fiduciary duties, the Directors could conclude that the only decision properly open was to accept and implement the Proposed New Loan.

ii)
In any event, there is an arguable case that the Directors' decision in relation to the Proposed New Loan was taken for an improper and ulterior purpose, with the result that, not only was it not a course which the Directors' fiduciary duties obliged them to take, but on the contrary was itself a breach of fiduciary duty.

21.
I consider these arguments in turn.

Does the Qualification only apply when the proposed Schedule 1 matter is the only course properly open to the Directors?

22.
This is a somewhat elusive argument, whose purpose is to seek to reconcile the contractual protection which clause 3(a) of the SHA is intended to give with the duties owed by directors to companies. In an effort to capture the point, I put the example to Mr Campbell of a decision facing directors of a company, in which the directors all agreed that solution Z was the outcome which best served the interests of the company (but would involve non- compliance with the obligations which would apply under a shareholders agreement to which a director was party), but solution Y was also a reasonable decision to take. Mr Campbell argued that the effect of clause 3(a) was that the directors who were parties to a shareholders' agreement containing clause 3(a) would be required, in this example, to adopt solution Y, while those who were not so party would adopt solution Z.

23.
I regard the argument that clause 3(a) has this effect as weak:

i)

It would require directors to act in other than what they thought the best interests of the company required, notwithstanding the subjective nature of the test and the fact that the company has entrusted the directors, and not the court or the shareholders of the ultimate parent, with the management of the company's affairs.

ii)
It would potentially infringe the director's duty to reach an independent judgment.

iii)
It would mean that the obligations owed by directors to the company (or when the Sequana duty was engaged, to its creditors) would be materially modified by the fact that the director had assumed a clause 3(a) obligation, with different duties as between directors who had and had not signed such an agreement. That would impair the collegiality of board decision-making.

iv)
The suggestion that a shareholders' agreement should influence or constrain a director's decision-making in a scenario in which the interests of a company's creditors, rather than its shareholders, had become paramount is particularly unattractive.

v)
It would raise a series of rather esoteric enquiries as to whether some alternative course of conduct, which in the Directors' view was not in the best interests of company, fell within the permissible of "second best" decisions such that the clause 3(a) contractual duty would win the day.

24.
This latter difficulty emerges with particular clarity in this case:

i)
It is the position of MI Squared that the interests of CKHL and the Operating Subsidiaries are best served by allowing the administration of the Company to be extended to the trading subsidiaries, something which it is said would maximise the prospects of an orderly sale of the business.

ii)
The position of the Directors is that the effects of administration on the trading entities would be highly and permanently damaging.

iii)
The Directors also point to the fact (which was not challenged) that the substantive terms of the Proposed New Loan are more favourable than the terms of the MHG Loan which it would repay.

25.
The competing positions envisage very different paths for the Operating Subsidiaries, as to the relative merits of which the Directors would be expected to have clear views, and which ordinarily they would be expected to act upon.

Was the decision to take out the Proposed New Loan in the best interests of CKHL and the Operating Subsidiaries and their creditors?

26.
In support of the argument that the decision to enter into the Proposed New Loan was not so obviously in the best interests of the creditors of CKHL and the Operating Subsidiaries that the Directors were mandated to take it (it being common ground that the Sequana duty is engaged here),

Mr Campbell pointed to the fact that MHG, the largest creditor, supported MI Squared's application for an injunction preventing repayment of its debt from the Proposed New Loan. However, I am satisfied that the interests of creditors to which directors must primarily have regard under the Sequana duty is the creditors' interest in being paid (just as that it is the interest for which the powers of a secured creditor must be exercised: see Downsview Nominees Ltd v First City Corporation Ltd [1993] AC 295).

27.
In any event, while MHG is the largest creditor, it is not the only creditor nor the only secured creditor, and the Proposed New Loan will provide funds for two other creditors to be repaid, as I have noted. While the Proposed New Loan will replace one set of creditors with the Fund, that is clearly capable of being a distinct benefit to other creditors having regard to:

i)
the more favourable terms of the Proposed New Loan; and

ii)
the fact that MHG is demanding immediate repayment and the appointment of administrators, whereas the Fund (presently: see [35] below) is not.

28.
In these circumstances, I am persuaded on the material before me that it is strongly arguable that the decision to enter into Proposed New Loan was at least one of the options reasonably open to the Directors when considering what the best interests of the Company required. However, I do not regard the argument that it was the only proper course as a strong one. The issue in question is one on which it is easy to see that different views might reasonably be held.

Did the Directors act for an improper purpose in relation to the Proposed New Loan?

29.
By way of an alternative submission, Mr Campbell submitted at the hearing that there is a sufficiently arguable case here that the Directors' decision in relation to the Proposed New Loan was taken for the purpose of placing themselves in a position where they can disrupt any attempt at an orderly sale by the administrators of the Company, as part of their ongoing dispute with the Minor Group. I was referred in this regard to the guidance given as to the application of the proper purpose test in the context of rival shareholding interests in Eclairs Group Ltd v JKX Oil & Gas Plc [2016] BCC 79, [15], [24] and [32]. I did not understand Mr Dougherty to dispute that if such an improper purpose was established, the Qualification to clause 3(a) of the SHA would not be engaged.

30.
Mr Campbell relied upon five matters said to provide the basis for the inference that the Directors were motivated by an improper purpose in this case:

i)
The Proposed New Loan was arranged in secret without the involvement of MI Squared or MHG. However, the demand for repayment by MHG has formed part of an established and strongly fought dispute between the Minor Group and the Directors, in which the former would naturally be expected to be resistant to attempts to redeem the MHG Loan and prevent the appointment of administrators over the Operating Subsidiaries. In these circumstances, I do not feel able to draw any arguable

inference from the lack of involvement of MI Squared or MHG in the development of these proposals beyond the fact that this is another manifestation of the poor relations between the respective sides.

ii)
That the source of the Proposed New Loan – the Fund – is from entities that support Mr King and Mr Corbin having a continuing role in the business. That, however, is scarcely surprising, nor is it surprising that the Directors looked favourably on a finance package which would avoid what they regard as the adverse consequences of the Operating Subsidiaries going into administration (and which would, as a result, leave the existing management in situ).

iii)
The use by Mr King of inflammatory language so far as MHG, the largest creditor, is concerned. I regard this complaint as in the same category as the first factor relied upon. I would note that Mr King has also given evidence as to what he says are inflammatory statements made to him by Mr Heinecke, a director of the Company appointed by MI Squared.

iv)
Breaches of duty by the Directors in seeking a moratorium in the name of all the Company's directors without the approval of those directors appointed by MI Squared. On the material before me, I accept that this gives rise to a legitimate concern as to the steps the Directors might be willing to take in pursuit of the ongoing commercial dispute.

v)
What are said to be damaging statements made by the First and Second Defendants in the press about the Minor Group in breach of the SHA and contrary to the requests of the administrators of the Company. While that might well constitute a legitimate complaint, and it may well constitute a breach of clause 25 of the SHA, it does not in my view lend much support to the inference that the Directors approved the Proposed New Loan for improper purposes, which is an allegation of a very different kind.

31.
Further, there are important matters which point the other way:

i)
First, as I have noted above, the Proposed New Loan is on terms which are more favourable than the MHG Loan. The decision, therefore, is one which, on its face, presents an obvious potential benefit to the Operating Subsidiaries.

ii)
Second, Mr Robert Harding and Mr Benji Dymant who have been appointed the monitors of the Operating Subsidiaries (**the Monitors**) support the decision to enter into the Proposed New Loan. I understand that the Monitors work for Teneo Financial Advisory Limited, a firm of Licensed Insolvency Practitioners, have considerable experience of administrations of companies in the restaurant business, and owe independent duties to the court.

iii)
Third, while the question of how damaging it would be for the Operating Subsidiaries to enter into administration is disputed (a dispute I return to below), the fact that entering into the Proposed New Loan would at least reduce the prospect of imminent administration for the Operating Subsidiaries also presents another potential benefit of such a course.

32.
I remind myself that I am not conducting a trial in this matter, and the evidence of the Directors has not been tested. I accept that it might be possible for Mr Campbell to plead an improper purpose case, and that things might look very different after disclosure and cross-examination. But, on the material before me, the improper purpose case appears thin, and the relative merits of this particular point as they currently appear favour the Directors.

The balance of convenience

33.
I turn to the issue of balance of convenience. MI Squared says that if an injunction is not granted:

i)
The MHG Loan will be paid off, even though the commercial arrangements between the parties in 2017 had envisaged that, "if the balloon went up", as Mr Campbell put it, MHG would be the Company's and Group's largest creditor with the advantages that position might be expected to bring in any administration process.

ii)
There is a real risk of disruption, or indeed chaos, if CKHL or the Operating Subsidiaries are themselves put into administration under different administrators to those appointed over the Company, making an orderly and efficient sale of the business(es) much more difficult to achieve.

34.
So far as that first issue is concerned, the MHG Loan itself gave MHG no entitlement to resist repayment, and, as I have noted, it is well-established that, in general, the only legitimate interests of a secured creditor are in being repaid the debt (which will happen if no injunction is granted). I accept that it is a different question to whether MI Squared has a contractual right (by virtue of clause 3(a)) to prevent such repayment, but on its face, it is not a particularly compelling adverse consequence of refusing the injunction that a creditor is repaid.

35.
As to the second:

i)
I accept that, on the terms of the Proposed New Loan, repayment of the debt could immediately be demanded from CKHL, and administrators appointed by the Fund. On the face of things, however, that would be a somewhat surprising course for the Fund to take, given that the Fund is managed by two companies, one with US$10 billion of assets under management and the other an asset management firm in the travel, tourism and hospitality sectors, who pursue long-term investment strategies.

ii)
There is a 60-day period before any administrators could be appointed in response to a default by the Operating Subsidiaries.

iii)
At the moment, there is no material before the Court which casts doubt on the Fund's statements through counsel that it believes this to be a viable business and an acceptable credit risk. Wasted transaction costs alone make it unlikely that matters have got this far simply to pull the rug tomorrow.

iv)

While MI Squared can point to a risk of real prejudice in certain eventualities if the injunction is not granted, that is a contingent risk.

36.
So far as the consequences to the Directors (as shareholders in the Company) and others if an injunction is granted are concerned:

i)
It is common ground that a consequence of the injunction being granted is that the Operating Subsidiaries would enter administration. The Directors submit that this would have disastrous consequences for them and hence for the Group as a whole, being likely to sever ties with customers, suppliers and staff, to have serious reputational consequences and to be destructive of value, to the detriment of all stakeholders.

ii)
MI Squared challenge that conclusion, pointing to the fact that the Operating Subsidiaries are already undergoing one form of insolvency process in the public eye (the Moratoria, which provide a 60-day grace period to attempt to address the financial issues facing the Operating Subsidiaries).

iii)
However, I am persuaded by Mr Dougherty's submissions that a provision which gives a brief period of "breathing space" is very different from entering administration (which is no doubt why the process of a moratorium exists as a "light touch" alternative which might save a company from administration). While the funded nature of the administration under discussion might avoid certain of the adverse costs consequences of an administration, I see force in the submission that it will not avoid the risks of damaging relations with suppliers (whose trade credit insurance, for example, might prevent them trading with entities in administration) nor the increased administrative burden of operating under the specialist legal regime which administration would bring into play.

iv)
Further, I note the Directors' views on the adverse effects of administration on the operating companies of a restaurant business are supported by the Monitors, who have made statements to that effect in their report to the Companies Court of 1 February 2022 and which are quoted in Mr King's witness statement. Those views are also supported by the Fund, when explaining their attitude to the business in which they are ready to invest $40m.

37.
In these circumstances, I accept that both parties can point to the adverse effects to which an adverse decision may give rise. However, I have found the evidence of the Directors on this issue more compelling, and the risk of adverse consequences more clearly made out.

Conclusion

38.
Standing back and having regard to:

i)
the effectively final effects which the decision to grant or not to grant the injunction will have;

ii)
my view on the relative merits of the parties' positions as they appear on the evidence before me; and

iii)

my view on the balance of convenience;

I am not persuaded that it would be appropriate to grant the injunction sought.