

**Thomas v Frogmore Real Estate Partners GP1 Ltd [2017] EWHC 25 (Ch)**

Of the various provisions relating to the removal or replacement of administrators, paragraph 81 of Schedule B1 of the Insolvency Act 1986 is the least used. Paragraph 81 provides for the appointment of an administrator to cease where there was an “improper motive” on the part of the applicant for the administration order or the person who appointed the administrator. As Philip Marshall QC (sitting as a Deputy Judge) noted in [Thomas v Frogmore Real Estate Partners GP1 Ltd](#), there is little in the way of explanation or guidance on the application of the provision. This is despite the fact that it is far from unusual for a QFCH (often connected to the company) to appoint an administrator out-of-court while a winding-up petition is pending to enable a pre-pack sale or to protect antecedent transactions, often to the consternation of the other creditors. Perhaps the lack of authorities is also indicative of the fact that where the administrator’s proposals have been rejected, paragraph 55 provides a less contentious route to obtaining similar relief.

In this case, it was alleged that the QFCH had acted with an improper motive in that its purpose was to stifle or at least impede the progress of litigation brought by the Company to which it was a defendant and where trial had been listed to commence very shortly.

The Deputy Judge held that the Court’s approach to the exercise of the discretion under paragraph 81 was:

- (1) Even if an improper motive was established on the part of the appointor, it did not follow that it would be ordered that the administration should cease. Improper motive was simply a feature required for the jurisdiction to be engaged. After that the court has a wide discretion.
- (2) It was sufficient that the appointor had a motive that was not in harmony with the statutory purpose of administration, which was causative (whether primarily or secondarily) of the decision to appoint;



- (3) Even if improper motive was established the court may decide to continue the administration, having regard to the interests of the affected parties. If the statutory purpose of administration could still be achieved, it would be likely that the administration should continue.

The Deputy Judge found as a fact that there had been no improper motive on the part of the QFCH.

The judgment is unlikely to encourage applications under paragraph 81. If the statutory purposes can be served, then it is likely that the administration will continue irrespective of the appointor's motivations. Dissatisfied creditors are best advised to look to the alternative remedies under Schedule B1 (including the rejection of the administrator's proposals) rather than attempting the somewhat Sisyphean task of applying under paragraph 81.

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