IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
[2024] EWHC 474 (Ch)

No. CH-2023-000139

Rolls Building
Fetter Lane
London EC4A 1NL

Wednesday, 7 February 2024

Before:

MR JUSTICE MEADE

B E T W E E N :

(1) DAVID SMITHSON
(2) ANDREW BECKINGHAM
(as liquidators of Castletech Retail Limited)

Appellants

- and -

L'OCCITANE LIMITED

Respondent

MR L WYGAS (instructed by McLoughlin & Co Solicitors) appeared on behalf of the Applicant/Appellant.

MR C BROCKMAN (instructed by Keystone Law) appeared on behalf of the Respondent.

J U D G M E N T

(Hearing in person, judgment via Microsoft Teams)

MR JUSTICE MEADE:

1 This is an appeal from a decision of ICC Judge Burton by an order of 8 June 2023 dismissing an application by the appellants under section 234(2) of the Insolvency Act 1986. I have been working from a note of the judgment agreed between the parties, although not formally approved by the ICC judge and, although this approach is perhaps a little unusual, I have been prepared to go ahead on that basis since the parties have agreed the note and since nothing turns on points of fine detail about its contents.

2 The background facts are as follows. Castletech Retail Limited (the "Company") was a construction company which carried out some building works for the respondent, L'Occitane Limited. The respondent, it was and is alleged, failed to pay the company what was owed; a dispute arose and the company entered into liquidation at that time. In the liquidation the respondent submitted a proof of debt was dated 26 October 2018. It alleged that the respondent was owed £676,000 odd. The proof was based on what is referred to as a "pay less notice" (the specific legal details of which do not matter to the appeal before me) that has been referred to as the "PLN". I will use that acronym).

3 The PLN set out what the respondent contended that it was owed. It covered both sums said to be owed to the respondent and the position as to what the respondent said was owed by it to the Company, and so it arrived at what the respondent said was the net position. The Company and the respondent negotiated about the respondent's position under the PLN prior to the Company's insolvency but the negotiations did not reach an outcome. At the time of entering into insolvency, the position was that the respondent claimed that it was due to be repaid the sum of £676,000 odd, and the Company claimed that there was due to it a sum of £396,000 odd.

4 It is common ground that the matters covered by the parties' discussions amounted to mutual dealings for the purposes of Insolvency Rule 14.25, which I will come to. The liquidators of the Company, who are the current appellants, and the respondent retained quantity surveyors to assist them in furthering discussions about the amount of the balance owed and which of them owed overall to the other, and there were quite significant discussions but, again, no resolution was reached. But at the end of the interchanges between the applicants and the respondents, the applicants produced an account with some accompanying reasons on 11 April 2022. It was in two parts. There was a lengthy narrative purporting to set out the overarching basis for the liquidators' reasons as to what they said was the final sum due, and there was a table setting out the individual claims put forward in the PLN and stating the liquidators' purported determination of each such element. Some of the liquidators' determinations were said to be based on the agreed position between the quantity surveyors, and others were based on what the liquidators had themselves concluded.

5 The liquidators' position was summarised in paragraph 9 of the skeleton submitted on their behalf for this hearing by Mr Wygas, of counsel, who appeared at the hearing, and I interpose that Mr Brockman, of counsel, appeared for the respondent, and the liquidators' position was as follows: first of all, that the claims and the cross-claims between the Company and the respondent meant that there were mutual dealings between the respondent and the Company for the purposes of rule 14.25 and, as I have said already, that is not in dispute; secondly, that under rule 14.25 an account of the final sums due must be taken; thirdly, that the account of April 2022 was such an account and showed that a balance was owed to the Company in the amount I have already mentioned; and fourthly, that under rule

14.25 the balance must be paid to the liquidator as part of the assets. ICC Judge Burton rejected this. The reasons appear in paragraphs 12 to 18 of the agreed note (there are two paragraph 18s):

> 12. In my judgment, the liquidators have confused and conflated the operation of mandatory set off and the procedure for a liquidator to reject proofs of debt. By Rule 14.7, a liquidator must admit or reject in whole or in part a proof of debt. This effects both the right of the creditor to prove for a share of the assts but also his right to be treated as a creditor or not, including his right to vote at creditors meetings.
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> 13. If a proof of debt is rejected, Rule 14.8 is engaged. Set off quantifies the net value of a claim by a creditor against the company or the company's claim against a debtor. As seen in *Bresco Electrical Services*, if any of the claims or cross claims are in dispute, they will first need to be resolved before the arithmetic procedure of setting one claim off against the other continues.
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> 14. The Liquidators appear to be treating Rule 14.25 to arrive at an indisputable balance due to the company which comprises a unique form of property. Having referred to *Stein v Blake*, MrWygas submits that apparently there is no longer any chose in action. He submits that the process of taking an account under Rule 14.25 gives rise to the Respondent holding property belonging to the company in the form of money which it must now pay to the liquidator.
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> 15. I do not understand this to be the meaning or consequence of Lord Justice Hoffman's dicta in *Stein v Blake*. He was referring to the original choses in action being extinguished by set off. It is clear to me from Rule 14.25 that what arises from the exercise of set off is a balance due from one party to the other. Rule 14.25(4) expressly refers to a balance owed. The right to recover a balance due to one party from another has long been characterised in law as a chose in action, the right to recover the amount then due. That right is a new chose in action, replacing the parties former choses in action claiming debts in opposite directions.
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> 16. The debtor is therefore not holding property of the company, unless the set off happens to be cash being held by the debtor because that is the only type of property that could be paid to the liquidator under s234. That is not the case here. Where the net balance proves to be the balance due to the company, the company has a cause of action to pursue it, usually via Part 7 proceedings. There is no property that can be delivered up or paid to an officeholder. The Company holds the asset, in the form of a cause of action and like all of the company's assets, whether payment under a contract for goods or services, it must be paid to the liquidator. The fact that the company has entered liquidation does not relieve its debtors of the obligation to pay. This is clear from Rule 14.25(4).
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> 17. In my judgment, the provision by the liquidators of the account cannot create a new form of property in the manner contended for by the liquidators. They have arrived at a figure they now consider to be due and they should seek to recover it in the usual way. The Respondent is not holding any property which is capable of being delivered up or paid to the liquidators.
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> 18. Despite the extensive comments in the account objecting to various elements of the Respondent's claims, I have seen no express rejection of the Respondent's proof of debt.

Rule 14.25 provides no appeal process equivalent to the right of appeal under Rule 14.8. If the liquidators intended to reject the Respondent's proof of debt, they should have expressly stated that they were doing so, whereupon the Respondents could have applied to the court under Rule 14.8. It is not acceptable for the liquidators to now claim that as a result of the comments in their solicitor's correspondence regarding the Respondent's right of appeal, they were in fact ejecting the Respondent's proof of debt.

18.The liquidators have, in my judgment, conflated Rules 14.7,14.8 and 14.25 to purport to create a form of undisputable property which in my judgment simply does not exist. Consequently, no property arises to form the subject of their application under s234 and I dismiss the application.

6 I turn to the law. The relevant provisions of the Insolvency Rules are 14.3, 14.7, 14.8(1) and (2), 14.25(1) to (4) (I quote only relevant parts):

14.3.— Proving a debt

(1) A creditor wishing to recover a debt must submit a proof to the office-holder unless—

(a) this rule or an order of the court provides otherwise; or

(b) it is a members' voluntary winding up in which case the creditor is not required to submit a proof unless the liquidator requires one to be submitted.

14.7.— Admission and rejection of proofs for dividend

(1) The office-holder may admit or reject a proof for dividend (in whole or in part).

(2) If the office-holder rejects a proof in whole or in part, the office-holder must deliver to the creditor a statement of the office-holder's reasons for doing so, as soon as reasonably practicable.

14.8.— Appeal against decision on proof

(1) If a creditor is dissatisfied with the office-holder's decision under rule 14.7 in relation to the creditor's own proof (including a decision whether the debt is preferential), the creditor may apply to the court for the decision to be reversed or varied.

(2) The application must be made within 21 days of the creditor receiving the statement delivered under rule 14.7(2).

14.25.— Winding up: mutual dealings and set-off

(1) This rule applies in a winding up where, before the company goes into liquidation, there have been mutual dealings between the company and a creditor of the company proving or claiming to prove for a debt in the liquidation.

(2) An account must be taken of what is due from the company and the creditor to each other in respect of their mutual dealings and the sums due from the one must be set off against the sums due from the other.

(3) If there is a balance owed to the creditor then only that balance is provable in the winding up.

(4) If there is a balance owed to the company then that must be paid to the liquidator as part of the assets.

7 Also relevant is section 234 of the Act:

234.— Getting in the company's property.

(1) This section applies in the case of a company where

(a) the company enters administration, or

(b) an administrative receiver is appointed, or

(c) the company goes into liquidation, or

(d) a provisional liquidator is appointed;

and "the office-holder" means the administrator, the administrative receiver, the liquidator or the provisional liquidator, as the case may be.

(2) Where any person has in his possession or control any property, books, papers or records to which the company appears to be entitled, the court may require that person forthwith (or within such period as the court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the office-holder.

8 The key case law is to be found in three decisions of the higher courts. The first is *Stein v Blake* [1996] AC 243. The rather complex facts do not directly matter, but the relevant parts of the decision are as follows (these are page numbers from the bundles and not the report): section 1 at page 250, section 3 at pages 250-251, the first and third paragraphs of section 4, starting at page 251, section 5 and 6 at pages 252-253, section 7 at pages 253-4, which are relied on to show that the bankruptcy setoff is mandatory and automatic, a matter touched on by the later cases to which I am going to refer, and section 8 at page 255, which for present purposes is the key passage.

9 *Stein v Blake* was considered by the Supreme Court in the case of *Bresco Electrical Services (in liquidation) v Michael J Lonsdale Electrical Limited* [2020] UKSC 25, and the relevant part of the analysis appears at sections 27 to 34:

Insolvency Set-off

27. The special rules as to set-off in the context of insolvency (usually labelled "insolvency set-off") form a small but important part of the wider statutory insolvency code, which is directed to ensuring that the assets of an insolvent person (individual or company) are first collected in and then distributed mainly pari passu among those with relevant claims of the same priority. Speaking generally, those objectives are served by the imposition of substantial restraints upon what creditors might otherwise be able to do by way of enforcing their rights. These restraints serve both to optimise the collection and realisation of the insolvent person's assets and to prevent a free for all among the creditors in seeking to get their hands on them. By contrast there are, unsurprisingly, few corresponding restraints upon the enforcement of the insolvent

person's rights by the relevant office-holder. In what follows I will concentrate on corporate insolvency, and therefore refer to the insolvent person as "the company". Although substantially the same scheme governs the insolvency process in both liquidation (voluntary or compulsory) and in a distributing administration, I will refer for present purposes to the office-holder as the liquidator.

28. The basic scheme whereby an unsecured creditor's claims may only be pursued by way of proof and participation in a pari passu distribution of any available surplus after discharge of prior claims, whereas the liquidator may pursue the company's claims in full, and with every available tool for enforcement, risks causing a real injustice where there are cross-claims between the company and one of its creditors arising from their mutual dealings. Leaving aside the special position of fiduciaries, there is no fairness in a creditor having to accept only a proportion of the debt due, while the company can recover on its cross-claim against the same creditor in full.

29. The legal and equitable rules for asserting set-off as a defence to the company's claim by no means encompass every type of cross-claim, in relation to current, contingent and future liabilities. But the statutory regime for set-off in insolvency, now to be found in IR 14.25 operates upon an altogether more comprehensive and rigorous basis. First, it applies to every type of pre-liquidation mutual dealing, and also to secured, contingent and future debts: see IR 14.25(1), (2), (6) and (7). Secondly, whereas legal or equitable set-off is essentially optional, taking effect only if the cross-claim is pleaded as a defence to the claim, insolvency set-off is mandatory, and takes effect upon the commencement of the insolvency (the "cut-off date"). It is said to be self-executing, and for some purposes the original cross-claims are replaced by a single claim for the balance: see IR 14.25(3) and (4). Thus the separate cross-claims may no longer be assigned after the cut-off date: see *Stein v Blake* [1996] AC 243 . But the separate claims may survive for other purposes: see *Wight v Eckhardt Marine GmbH* [2003] UKPC 37; [2004] 1 AC 147 , paras 26-27 per Lord Hoffmann. One example is the balance of contingent or prospective claims under IR 14.25(5). Within the liquidation, a net balance owing to the creditor must be pursued by proof of debt in the ordinary way. The liquidator is entitled to be paid the full amount of any net balance owing by the creditor, and may exercise any available remedies for its quantification and recovery, including litigation, arbitration or ADR: see IR 14.25(4) and (5).

30. The identification of the net balance is to be ascertained by the taking of an account: see IR 14.25(2). If there is no dispute as to the existence and amount of the claims and cross-claims this is in practice a matter of simple arithmetic, the net balance being the difference between the aggregate of the claims and the aggregate of the cross-claims. But if any of the claims and cross-claims are in dispute, then those disputes will need first to be resolved, by reference to the individual merits of each, before the arithmetic resumes: see again *Stein v Blake* (supra) per Lord Hoffmann at 255E-G.

31. This schematic portrayal of the way in which insolvency set-off works should not mask the reality, namely that set-off may, and commonly does, arise both in the ordinary process of proof by a creditor and in the ordinary course of litigation or other dispute resolution processes when the liquidator is seeking to pursue a claim of the company. The account is not an essential first step in the process. Thus a proof by a creditor must acknowledge an undisputed cross-claim by the company (see IR 14.4(1)(d)), or the claim may be allowed in part by the liquidator after reducing the creditor's claim by reference to a disputed cross-claim of the company. In a claim in court by the company the liquidator may acknowledge an undisputed cross-claim by the defendant, or be met by the defendant asserting a disputed cross-claim against the

company by way of set-off (and therefore defence) in those proceedings: see *Stein v Blake* (supra) at p 253 per Lord Hoffmann.

32. The process of proof of debt in the insolvency regime shares a number of the essential features of adjudication. Once initiated it is designed to operate both speedily and relatively cheaply. The liquidator is a professional likely to have some experience or expertise in business of the type being conducted by the company, together with accounting expertise. The liquidator is also semi-independent. Although nominally asserting the company's position against the proving creditor, the liquidator is in substance adjudicating between the creditors as a whole in deciding what share of the available assets each should receive. The liquidator holds no brief for any particular creditor. The process of proof is (by comparison with litigation or arbitration) relatively light-touch and inquisitorial, and the outcome is only provisionally binding, in the sense that both the proving creditor and any other dissatisfied creditor may challenge the liquidator's ruling, by proceedings in court in which the issues are addressed de novo. It becomes final only if not challenged. In practice, as with adjudication, most of the liquidator's rulings in the process of proof are not challenged.

33. Where there are real disputes between the company and third parties (who may be creditors or debtors) the insolvency code is inherently flexible as to the best means for their resolution. A disputed pending claim (in court proceedings or in arbitration) against the company (as at the cut-off date) may be allowed to continue by the liquidator or by the court supervising the insolvency process, as the best means of resolving the dispute: see *Cosco Bulk Carrier Co Ltd v Armada Shipping SA* [2011] EWHC 216 (Ch); [2011] 2 All ER (Comm) 481, para 58. New proceedings may be authorised for the same purpose. The liquidator may take the initiative by seeking the directions of the court in relation to particular disputes or to legal issues common to a number of disputed claims, and for that purpose join interested parties or representatives of interested classes. Within those proceedings the court has almost unlimited procedural flexibility, as the numerous matters referred to court by the administrators of the top Lehman company in London (Lehman Brothers International (Europe)) demonstrated. Furthermore there is no rule that, merely because there exists set-off between cross-claims, and the need to take an account, disputes about all the claims and cross-claims need to be adjudicated upon in a single proceeding. Again, the Lehman litigation contains numerous examples of the separate resolution, in successive proceedings, of different issues between the same parties within the Lehman group, concerning their mutual dealings.

34. More generally liquidators are no strangers to ADR, or to the pursuit of the most cost-effective and proportionate means of resolution of disputes. Specific provision is made for the expenses incurred by liquidators in the pursuit of "other dispute resolution procedures" to be treated as liquidation expenses: see IR 7.108(4)(a)(ii). The court has expressly approved the inclusion of third party determination procedures similar to adjudication in insolvency schemes of arrangement: see *In re Pan Atlantic Insurance Co Ltd* [2003] EWHC 1696 (Ch); [2003] 2 BCLC 678 , para 32 per Lloyd J.

10 The decision of the Supreme Court refers to *Stein v Blake*. It does not in any sense, in my view, call into question what was said in *Stein v Blake* and, indeed, the analysis of Lord Hoffmann is used as part of the reasoning, in particular at paragraphs 29 and 30.

11 *Lonsdale*, and indeed *Stein v Blake*, were considered by the Court of Appeal a short time later in the case of *John Doyle Construction Limited v Erith Contractors Limited* [2021]

EWCA Civ 1452, and the relevant parts of the quite lengthy judgment, the underlying facts of which are not relevant, are as follows:

> 118. In the case of corporate insolvency, set-off is governed by rule 14.25 of the Insolvency (England and Wales) Rules 2016 (" IR "). IR 14.25 (3) and (4) provide for dealing with the balance. If the balance is owed to the creditor then only that balance is provable. If the balance is owed to the company, then that must be paid to it.
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> 122. Insolvency set-off is mandatory. It is not a matter of choice. Indeed, parties to mutual dealings cannot contract out of it: *National Westminster Bank Ltd v Halesowen Presswork and Assemblies Ltd* [1972] AC 785. In *Re Bank of Credit and Commerce International SA (No. 10)* [1977] Ch 213 , it was argued that the court had an inherent power to disapply the rules about set-off. Sir Richard Scott V-C roundly rejected that argument. He said:
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> > "I do not accept that there is any such inherent power. The courts have, in my judgment, no more inherent power to disapply the statutory insolvency scheme than to disapply the provisions of any other statute."
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> …
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> 129. The effect of the cases to which I have referred seems to me to be clear. Insolvency set-off is automatic (or "self-executing" as it is sometimes called). It affects the substantive rights of the parties; and will reduce or extinguish a debt. The claims exist for the purpose of quantification only. When it comes either to proving in the insolvency or suing in court, it is only the net balance which can be proved or recovered. If claim and cross claim are both litigated (and the cross claim amounts to a set-off), and the latter overtops the former, then judgment on the claim must be entered against the claimant and in favour of the cross claimant. It is wrong in principle to enter judgment separately on both claim and cross-claim.
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> …
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> 152. At [31] and [32] Lord Briggs compared the process of adjudication and the liquidator's assessment of a proof (including his assessment of any asserted set-off). Under IR 14.8 if a creditor is dissatisfied with the liquidator's decision in relation to his proof, he has a right of appeal to the court. But that appeal must be brought within 21 days: IR 14.8 (2). On an appeal, the court may decide the issue itself (if necessary with the aid of disclosure and cross-examination): *Financial Services Compensation Scheme Ltd v Larnell (Insurances) Ltd* [2006] QB 808 [2006] QB 808 [11] ; Re BCCI (No 6) [1994] 1 BCLC 450 ; *Law Society v Shah* [2007] EWHC 2841 (Ch), [2008] Bus LR 1742 . Alternatively, it may permit separate proceedings to be taken (either in court or by arbitration) to establish the creditor's entitlement: *Cosco Bulk Carrier Co Ltd v Armada Shipping SA* [2011] EWHC 216 (Ch), [2011] 2 All ER (Comm) 481 . But importantly, if a creditor fails to appeal within the stated time against a liquidator's decision, he cannot thereafter challenge that decision or assert his claim by way of set-off: *BCCI v Habib Bank* [1999] 1 WLR 42 . There is, therefore, a mechanism within the Insolvency Rules for a liquidator's decision on a proof to become final. There is no equivalent for an adjudicator's award. Although in some respects, the processes are similar, there is, therefore, a very significant difference between the two.

153. As Lord Briggs pointed out, there is considerable procedural flexibility in the conduct of a liquidation. The flexibility should be used to ascertain the net balance (one way or the other). In my judgment, it is only once the net balance has been ascertained, by whatever are the appropriate means, that judgment should be entered.

12 Central to the appellant's position on this appeal, as Mr Wygas made clear, is the proposition that an account when taken under rule 14.25 creates an asset which is the net amount of money owing, which asset, it is contended, is, in the case where the balance is due to the Company, held by the creditor, and which can, therefore, be sought to be recovered by an application under section 234, and Mr Wygas focuses on the words "as part of the assets" in rule 14.25 to support this.

13 *Stein v Blake*, in my view - and I am not sure this was even really disputed - is contrary to this analysis. It says very clearly that an account of this kind leads to a situation where, if the balance is in favour of the Company, the respective parties' previous cross-claims are replaced by a chose in action, a right by the Company to recover the amount due. The Company always retains that chose in action, the creditor does not, so, on that analysis, there is no property for a claim to be made in respect of under section 234, and that was the main reason why the ICC judge dismissed the application, the subject of this appeal.

14 Recognising the difficulty proposed by *Stein v Blake*, I suspect, Mr Wygas suggested that its effect had been changed by the introduction of rule 14.25. He argued that rule 14.25 made it mandatory for the creditor to pay and the words "part of the assets" implied that an asset was created in the hands of the creditor. I reject this. Section 323 of the Insolvency Act 1986, the provision considered in *Stein v Blake*, was not in materially different terms, although it applied to personal insolvency, than the provisions relevant now, and rule 4.90 of the Insolvency Rules, as they stood at the time, said the following:

Mutual credit and set-off

4.90.- (1) This Rule applies where, before the company goes into liquidation there have been mutual credits, mutual debts or other mutual dealings between the company and any creditor of the company proving or claiming to prove for a debt in the liquidation.

(2) An account shall be taken of what is due from each party to the other in respect of the mutual dealings, and the sums due from one party shall be set off against the sums due from the other.

(3) Sums due from the company to another party shall not be included in the account taken under paragraph (2) if that other party had notice at the time they became due that a meeting of creditor had been summoned under section 98 or (as the case may be) a petition for the winding up of the company was pending.

(4) Only the balance (if any) of the account is provable in the liquidation. Alternatively (as the case may be) the amount shall be paid to the liquidator as part of the assets.

15 That provision included the words "of the assets" and the word "shall" instead of "must", but the very minor differences of wording are unimportant, in my view, and cannot achieve the very radical change to the analysis in *Stein v Blake* for which Mr Wygas contends.

16 Further, *Lonsdale* affirms this part of the analysis in *Stein v Blake*, and *Doyle* follows it, and, of course, both of those decisions are binding on me, just as they were on the ICC judge, and my overall conclusion from those three cases is that they provide no support for any different analysis from *Stein v Blake* and, therefore, I reject the contention either that at the time of *Stein v Blake* any analysis could support the holding of an asset in the hands of the creditor, or that the position has changed since.

17 Mr Brockman contended that the words "as part of the assets" speak to the treatment of the balance once paid, so that, for example, the balance once paid could be subject to a fixed or floating charge, in contradistinction, he said, to a claim for, for example, a transaction at an undervalue. I agree, but whether or not that is a fully complete or correct explanation, there is no support for the words creating the new form of property for which the liquidators contend. That is a sufficient reason to dismiss the appeal, because that point was, as I have mentioned already, central to the liquidators' contention, and that being so, I will deal more briefly with the other points that were argued before me.

18 It is necessary to the liquidators' argument also that the account provided in April 2022 was dispositive of the position between the Company and the respondent so as to establish the balance payable and trigger, on the liquidators' argument, rule 14.25(4). The problem with that is that the Company's claims had never been quantified. Discussions had failed and the Company had never brought a claim, still less one that had been resolved. In my view, the ICC judge was right about this too. Rule 14.8 applies to proof of debt only. Such a proof as submitted under 14.7 might be wholly or partly rejected, and then the creditor can appeal under 14.8, but there is, at the end of that process, a result which provides one input to the account under rule 14.25 in an arithmetical sense. The other input to the account is what is due from the creditor to the Company. That does not fall under rule 14.8 and, if it is disputed, then the dispute has to be resolved by the usual means: litigation, adjudication, arbitration or ADR. That dispute is not within the ambit of rule 14.8.

19 ICC Judge Burton dealt with this at paragraph 13 of the note, as provided to me, citing paragraph 30 of *Bresco*, which I agree supports the respondent's position, and matters are also very clear, in my view, from paragraph 152 of the Court of Appeal's decision in *Doyle* in the last two sentences.

20 I note as a point of fact that the respondent's proof, as submitted in the liquidation, was never in fact formally or properly rejected by the liquidators, as the ICC judge found in the decision as noted in paragraph 18. It is not necessary to my decision but I agree with the ICC judge's analysis there, and as to the factual finding that there was no rejection of the proof, it would, it seems to me, be quite wrong for me to go back into that on that appeal. It would not, and could not, help the appellant, in any event, as the analysis of rule 14.25 that I have set out above is not dependent on it and leads to the conclusion that the property arising in this situation is a chose in action held by the Company at all times, in any event.

21 Mr Brockman submits that this analysis all makes sense: a creditor proves under rule 14.7 in order to participate in any distribution and to be able to vote. There needs to be an appeal mechanism and rule 14.8 provides it, but the creditor may, in many instances, not find it worth appealing, because, for example, there is no money to distribute at all, but, Mr Brockman says, to say that rules 14.7 and 14.8 make the liquidators judges of claims by the insolvent company against a potential creditor would have, it is possible, radically detrimental effects on the creditor, which cannot be supported by language in the legislation, and I agree.

22 I was also concerned that the appellant's approach would lead, if correct so far, to complex disputes needing to be assessed in the context of a section 234 application, which is not its purpose or nature (see, for example, *Ezair v Conn* [2020] EWCA Civ 687). Mr Wygas' answer to that was that there would be no complexity in a case such as the present because, owing to the respondent not having challenged the account, the account was now binding and there was, therefore, nothing left to decide on a section 234 application, let alone anything of a higher complexity.

23 Given my earlier conclusions that that analysis is wrong, and that the account did not become binding, I reject that argument as well, and, therefore, the overall disposition is that I dismiss the appeal.

CERTIFICATE

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