

## **Marcia Shekerdemian QC: statutory materials**

### **135.— Appointment and powers of provisional liquidator.**

- (1) Subject to the provisions of this section, the court may, at any time after the presentation of a winding-up petition, appoint a liquidator provisionally.
- (2) In England and Wales, the appointment of a provisional liquidator may be made at any time before the making of a winding-up order; and either the official receiver or any other fit person may be appointed.
- (3) In Scotland, such an appointment may be made at any time before the first appointment of liquidators.
- (4) The provisional liquidator shall carry out such functions as the court may confer on him.
- (5) When a liquidator is provisionally appointed by the court, his powers may be limited by the order appointing him.

### **286.— Power to appoint interim receiver.**

- (1) The court may, if it is shown to be necessary for the protection of the debtor's property, at any time after the presentation of a bankruptcy petition and before making a bankruptcy order, appoint the official receiver [ or an insolvency practitioner]<sup>1</sup> to be interim receiver of the debtor's property...
- (3) The court may by an order appointing any person to be an interim receiver direct that his powers shall be limited or restricted in any respect; but, save as so directed, an interim receiver has, in relation to the debtor's property, all the rights, powers, duties and immunities [given by]<sup>3</sup> the next section.
- (4) An order of the court appointing any person to be an interim receiver shall require that person to take immediate possession of the debtor's property or, as the case may be, the part of it to which his powers as interim receiver are limited.
- (5) Where an interim receiver has been appointed, the debtor shall give him such inventory of his property and such other information and shall attend on the interim receiver at such times, as the latter may for the purpose of carrying out his functions under this section reasonably require.
- (6) Where an interim receiver is appointed, [section 285\(3\)](#) applies for the period between the appointment and the making of a bankruptcy order on the petition, or the dismissal of the petition, as if the appointment were the making of such an order.
- (7) A person ceases to be interim receiver of a debtor's property if the bankruptcy petition relating to the debtor is dismissed, if a bankruptcy order is made on the petition or if the court by order otherwise terminates the appointment.
- (8) References in this section to the debtor's property are to all his property, whether or not it would be comprised in his estate if he were [made]<sup>4</sup> bankrupt.

### **287.—[Powers of interim receiver] .**

- (1) [An interim receiver appointed under [section 286](#)]<sup>2</sup> is the receiver and (subject to [section 370](#) (special manager)) the manager of the [debtor's property]<sup>3</sup> and is under a duty to act as such.

(2) The function of [an interim]<sup>4</sup> receiver while acting as receiver or manager of the [debtor's property]<sup>5</sup> under this section is to protect [the property]<sup>6</sup>; and for this purpose—

- (a) he has the same powers as if he were a receiver or manager appointed by the High Court, and
- (b) he is entitled to sell or otherwise dispose of any perishable goods comprised in [the property]<sup>6</sup> and any other goods so comprised the value of which is likely to diminish if they are not disposed of.

(3) [An interim]<sup>7</sup> receiver while acting as receiver or manager [of the debtor's property]<sup>8</sup> under this section—

- (a) shall take all such steps as he thinks fit for protecting [the debtor's property,]<sup>9</sup>
- (b) is not required to do anything that involves his incurring expenditure, except in pursuance of directions given by—
  - (i) the Secretary of State, where the official receiver is the interim receiver, or
  - (ii) the court, in any other case,
- (c) may, if he thinks fit (and shall, if so directed by the court) at any time [seek a decision on a matter from]<sup>11</sup> the [debtor's]<sup>12</sup> creditors.

(4) Where—

- (a) an interim receiver acting as receiver or manager of the debtor's property under this section seizes or disposes of any property which is not the debtor's property, and
- (b) at the time of the seizure or disposal the [interim receiver]<sup>14</sup> believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

the [interim receiver is]<sup>15</sup> not to be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by his negligence; and he has a lien on the property, or the proceeds of its sale, for such of the expenses of the [interim receivership]<sup>16</sup> as were incurred in connection with the seizure or disposal.

### **236.— Inquiry into company's dealings, etc.**

(1) This section applies as does [section 234](#); and it also applies in the case of a company in respect of which a winding-up order has been made by the court in England and Wales as if references to the office-holder included the official receiver, whether or not he is the liquidator.

(2) The court may, on the application of the office-holder, summon to appear before it—

- (a) any officer of the company,
- (b) any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or
- (c) any person whom the court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company.

(3) The court may require any such person as is mentioned in subsection (2)(a) to (c) to submit [to the court]<sup>1</sup> an account of his dealings with the company or to produce any books, papers or other records in his possession or under his control relating to the company or the matters mentioned in paragraph (c) of the subsection.

(3A) An account submitted to the court under subsection (3) must be contained in—

- (a) a witness statement verified by a statement of truth (in England and Wales), and
- (b) an affidavit (in Scotland).

(4) The following applies in a case where—

- (a) a person without reasonable excuse fails to appear before the court when he is summoned to do so under this section, or
- (b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the court under this section.

(5) The court may, for the purpose of bringing that person and anything in his possession before the court, cause a warrant to be issued to a constable or prescribed officer of the court—

- (a) for the arrest of that person, and
- (b) for the seizure of any books, papers, records, money or goods in that person's possession.

(6) The court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the court under the warrant or until such other time as the court may order.

### **366.— Inquiry into bankrupt's dealings and property.**

(1) At any time after a bankruptcy order has been made the court may, on the application of the official receiver or the trustee of the bankrupt's estate, summon to appear before it—

- (a) the bankrupt or the bankrupt's spouse or former spouse [ or civil partner or former civil partner]<sup>1</sup>,
- (b) any person known or believed to have any property comprised in the bankrupt's estate in his possession or to be indebted to the bankrupt,
- (c) any person appearing to the court to be able to give information concerning the bankrupt or the bankrupt's dealings, affairs or property.

The court may require any such person as is mentioned in paragraph (b) or (c) to submit [a witness statement verified by a statement of truth]<sup>2</sup> to the court containing an account of his dealings with the bankrupt or to produce any documents in his possession or under his control relating to the bankrupt or the bankrupt's dealings, affairs or property.

(2) Without prejudice to [section 364](#), the following applies in a case where—

- (a) a person without reasonable excuse fails to appear before the court when he is summoned to do so under this section, or

- (b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the court under this section.
- (3) The court may, for the purpose of bringing that person and anything in his possession before the court, cause a warrant to be issued to a constable or prescribed officer of the court—
- (a) for the arrest of that person, and
  - (b) for the seizure of any books, papers, records, money or goods in that person's possession.
- (4) The court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the court under the warrant or until such other time as the court may order.