

Restructuring Bankruptcy & Insolvency Group Legal Alert

Inspection by a third party of the Court file in insolvency proceedings

On 2 July 2008 the High Court handed down a decision¹ which concerned, in part², its power under Insolvency Rules 1986, rule 7.31(4) to grant special leave to any person to inspect the file in insolvency proceedings³.

The decision

The Court held that acquisition of evidence relating to the affairs of an insolvent debtor (a company in liquidation, in this case) for use in other proceedings is capable of being a legitimate use of Insolvency Rules 1986, rule 7.31(4) so long as that evidence is probative of (or at least relates to) a fact or matter at issue in those proceedings, and so long as the entity to whom material on the Court file relates is not able to point to any countervailing prejudice. Inspection in such circumstances is consistent with the purpose for which the right to inspect is given, that is, to enable persons who have a legitimate interest in a particular insolvency proceeding to discover what has taken place.

1. *Franbar Holdings Ltd v Patel and others* [2008] EWHC 1534 (Ch), William Trower QC sitting as a Deputy Judge of the High Court.
2. Primarily the decision was concerned with an application for permission to continue a derivative claim.
3. Insolvency Rules 1986, rule 7.31(4) provides that any person may, by special leave of the Court, inspect the file.

The Court granted special leave to inspect the file (with the consequence that the applicant was also entitled to copies on payment of the appropriate fee⁴) subject to the condition that such copies (and the information in them) may be used only for the purposes of specified proceedings to which the applicant was a party. The Court held that its order was to be treated as if made in the winding-up of the debtor company, with the consequence that any person asserting that they are prejudiced by it, including any liquidator still in office, will be at liberty to rescind or vary it.

Comment

This case serves as a useful reminder of the Court's power to allow the inspection of the file by third parties.

If inspection were permitted then, subject to the scope of the Court's order, any documents filed (by an office holder or otherwise) would be available to the third party.

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4. Insolvency Rules 1986, rule 12.15.

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