Hilary Term
[2025] UKPC 18
Privy Council Appeal No 0104 of 2023

JUDGMENT

Steven Goran Stevanovich (Appellant) *v* Matthew Richardson and another (as Joint Liquidators of Barrington Capital Group Ltd (In Liquidation)) (Respondents) (Virgin Islands)

From the Court of Appeal of the Eastern Caribbean Supreme Court (British Virgin Islands)

before

Lord Hodge
Lord Briggs
Lord Leggatt
Lord Richards
Dame Janice Pereira

JUDGMENT GIVEN ON
15 April 2025

Heard on 9 December 2024

Appellant
Stephen Moverley Smith KC
Andrew Willins
(Instructed by Blake Morgan LLP (London))

Respondents
Alexander Cook KC
(Instructed by PCB Byrne LLP)

DAME JANICE PEREIRA:

1. This appeal is from the Eastern Caribbean Court of Appeal for the Territory of the Virgin Islands. The Court of Appeal on 7 March 2022 dismissed Mr Stevanovich's appeal against the judgment and order of Wallbank J made on 5 December 2018 in which he held that Mr Stevanovich lacked standing to apply under section 273 of the Insolvency Act 2003 ("IA") to reverse the decision of the joint liquidators' ("the Liquidators") admitting a claim in proof of debt ("the Claim") submitted by a US Chapter 11 Trustee, in the liquidation of Barrington Capital Group Ltd. The application was dismissed primarily on the basis that Mr Stevanovich, a former sole director of the Company, had not shown that he was a "person aggrieved" for the purposes of section 273 of the IA. Alternatively, Mr Stevanovich also sought an order that the court exercise its inherent supervisory jurisdiction over the Liquidators, as its officers, to direct them to apply to expunge the Claim pursuant to section 210(2) of the IA. Wallbank J found that section 210(2) did not apply presumably because section 210(2) spoke to such an application being made either by the liquidator or a creditor and no person fitting either category had made such an application. In respect of both limbs of the application the Court of Appeal found to similar effect.

2. This appeal therefore raises the following questions for determination:

(a) Whether Mr Stevanovich is a "person aggrieved" and thus has standing to challenge the decision of the Liquidators admitting the Claim;

(b) Whether the court has an inherent jurisdiction to direct a liquidator to make an application under section 210(2) of the IA to expunge the Claim and, if so;

(c) Whether Mr Stevanovich may invoke that jurisdiction.

The background

3. Barrington Capital Group Ltd ("the Company") was incorporated in the British Virgin Islands ("BVI") on 12 September 2000. Prior to its change of name on 18 August 2010, the Company was called Capital Strategies Fund Ltd. Up to 18 August 2010, the Company's sole director was Mr Stevanovich. The sole shareholder of the Company is said to be a company called Bermuda Administrative Service Ltd, as nominee for Mr Stevanovich's extended family and associates who are said to be its ultimate beneficial owners.

4. The Company carried on business as an investment fund. In doing so, it advanced a series of loans to a US company, Petters Company Inc ("Petters"), operated by one Mr Thomas Petters. Petters repaid those loans with interest. It was later discovered that Petters was part of a fraudulent Ponzi scheme orchestrated by Mr Petters. On 24 December 2008 Mr Douglas Kelly was appointed in US proceedings as a Chapter 11 Trustee ("the US Trustee") over Petters.

5. On 3 June 2009, Mr Petters and Petters were charged with money laundering and other crimes in relation to the Ponzi scheme and on 2 December 2009 Mr Petters was convicted of those crimes. There is no suggestion that the Company or Mr Stevanovich were aware of or had any involvement with the fraudulent activities of Petters or were so aware when the loans were repaid.

6. Sometime during the second half of 2009, while Mr Stevanovich was still a director, a decision was taken to place the Company into voluntary liquidation. Mr Stevanovich is said to have resigned as a director of the Company on 18 August 2010 and Universal Directors Inc ("Universal") appointed in his place, it is said, to deal with the liquidation of the Company.

7. On 23 August 2010, the Company applied to the Financial Services Commission for the cancellation of its certificate of recognition as a professional mutual fund. The certificate of recognition was cancelled on 15 September 2010.

8. On 14 October 2010, Universal approved a liquidation plan for the Company. On the same day it was resolved to declare a dividend and distribute to its shareholder the Company's sole significant remaining asset, being units in a Cayman limited partnership, Capital Strategies Cayman LP, valued at US$10, 383,603.89.

9. While these steps for the voluntary dissolution of the Company were being undertaken, the US Trustee, on 8 October 2010, filed a complaint against the Company, Mr Stevanovich and others, in Minnesota in the United States ("the US Proceedings") claiming some US$3.2 billion. In the US Proceedings the US Trustee seeks relief including the reversal of certain transfers that Petters had made to the Company. The US Proceedings were served on the Company at its registered office in the BVI on 16 November 2010.

10. On 29 November 2010, a certificate of solvency was signed by Universal on behalf of the Company and on the same day Edwin Geerman was appointed its sole liquidator. On 14 January 2011, a certificate of completion of the voluntary liquidation was filed by Mr Geerman and on the same day the Company was dissolved. No provision was made for any claims that the US Trustee might have.

11. On 16 April 2013, the US Trustee applied to the BVI Commercial Court for the dissolution of the Company to be declared void. That application was granted on 30 April 2013 with the result that the Company was back in liquidation, now under the court's supervision with liquidators appointed by the court.

12. On 19 August 2013 the US Trustee submitted a claim in the liquidation for some US$424.4 million. Mr Stevanovich is defending the US proceedings. However, the Company did not participate in the US Proceedings with the result that a default judgment was entered against the Company on 7 April 2015 in the sum of US$578,366,966.24.

13. On 15 May 2015 the Liquidators admitted the Claim in the sum of US$398,503, 855.56 (being the default judgment less interest and costs). The Company (having no assets) was thereby rendered insolvent. Apart from the Claim of the US Trustee, the Company had no other creditors.

14. On 7 October, 2016 the Liquidators, on the basis of the Company's insolvency brought about by the admission of the Claim, launched proceedings in the BVI ("the Main Proceedings") against Mr Stevanovich in which the Liquidators contend that Mr Stevanovich engaged in fraudulent trading and misfeasance as a director or de facto director of the Company in respect of the distributions made by the Company, including on its winding up. They seek a contribution from Mr Stevanovich in respect of loss sustained by the Company caused by Mr Stevanovich's alleged breaches. The Main Proceedings, which are funded by the US Trustee on behalf of the Liquidators, are ongoing. A central prong of Mr Stevanovich's Defence in the Main Proceedings is that the Claim should not have been admitted or, put another way, is not an admissible claim in the liquidation because the Company was not present in the United States at the time of the issuance of the US Trustee's complaint and accordingly the default judgment against the Company which forms the basis of the Claim, was not recognisable and enforceable in the BVI.

15. Then, on 24 September 2018, almost a year after filing his Defence in the Main Proceedings (and more than three years after admission of the Claim), Mr Stevanovich launched his section 273 application for the reversal of the admission of the Claim, alternatively, for a direction that the Claim be expunged under section 210(2) of the IA. The basis of both limbs of the application is the same and mirrors the central prong of his Defence in the Main Proceedings – that is, that the Claim was wrongly admitted.

16. The upshot of this is that the Main Proceedings have in the meantime been stayed pending a final determination on the section 273 issue of standing.

The judgments of the courts below

17. Both courts below ruled that Mr Stevanovich lacked standing under section 273 of the IA. The lower court's ruling is captured in para 29 of its judgment. Wallbank J found that Mr Stevanovich's application was brought in the capacity of a defendant to the Main Proceedings and not as someone with a legitimate interest in the relief sought in the application and thus was an outsider to the liquidation. He also found that Mr Stevanovich's interests are adverse to the liquidation and to the interests of creditors and that he is not directly affected by the Liquidators' decision to admit the Claim; that, at best, he is only indirectly affected.

18. The Court of Appeal similarly held, dismissing the appeal, that Mr Stevanovich lacked standing under section 273 of the IA, as he was not directly affected by the exercise of a power given specifically to the Liquidators. The court also concluded that the section 273 relief was sought as a defendant to the proceedings (the Main Proceedings) brought against him for contribution to the Company's estate; that section 273 was not the only avenue of challenge available to Mr Stevanovich; and that the Main Proceedings provide an appropriate forum for the resolution of the admissibility of the Claim (the cornerstone of his Defence). He was not a person with a legitimate interest in the relief sought.

The principles – section 273 IA – is the appellant a "person aggrieved"?

19. The starting point in determining this issue is section 273 of the IA which states as follows:

> "A person aggrieved by an act, omission or decision of an office holder may apply to the Court and the Court may confirm, reverse or modify the act, omission or decision of the office holder."

20. An "office holder" is defined as including a liquidator of a company in liquidation. [See sections 272(1) and 281 IA]. The IA, however, offers no definition of the expression "person aggrieved". The expression accordingly falls to be construed within the structure and context of the IA itself and its purpose while drawing guidance from the authorities where similar or near similar provisions fell to be construed. It is common ground that section 273 of the IA bears its closest resemblance to section 168(5) of the UK Insolvency Act 1986 ("the IA 1986").

21. This is the first appeal reaching the Board from the Court of Appeal of the Virgin Islands concerning the meaning and scope of section 273 of the IA. Prior to this application there were three occasions on which the Eastern Caribbean Court of Appeal was tasked with deciding whether an applicant was a *person aggrieved* for the purposes of section 273. The first was in *ABN AMRO Fund Services (Isle of Man)* Nominees Ltd *v Krys* (BVIHCMAP 2016/0011-0016 and 0023-0028); the second in *Stanford v Akers*

(BVIHCMAP 2017/0019); and the third in *Treehouse Investments Ltd v Jackson* (BVIHCMAP 2021/0020). These decisions were all prior to the decision of the UK Supreme Court in *Brake v The Chedington Court Estate Ltd* [2023] UKSC 29; [2023] 1 WLR 3035 in which Lord Richards JSC, after conducting an analysis of earlier authorities dealing with the question of standing in the context of bankruptcy and corporate insolvency, in a comprehensive and unanimous judgment of the court, clarified the approach to be taken in determining who may be considered as a *person aggrieved* or*,* in other words, who may have standing to challenge the decision of a trustee of a bankrupt's estate or an office holder such as a liquidator of an insolvent company. The parties accordingly place heavy reliance on the dicta of Lord Richards in *Brake,* given its highly persuasive force in determining the questions raised in this appeal before the Board. *Brake* now represents the single most authoritative decision on the issue of standing whether in relation to a bankruptcy under section 303(1) or a corporate insolvency under section 168(5) of the IA 1986 and, by analogy, to the question of standing under section 273 of the IA. Although the facts in *Brake* are not directly relevant for present purposes, copious references and quotations from various passages in *Brake* are of considerable assistance to the discussion of the principles to be applied in determining the present appeal.

The Brake decision

22. Having compared section 303(1), which provided for "a bankrupt or any of his creditors or any other person … dissatisfied by any act … or decision of a trustee of the bankrupt's estate" to apply to the court, with section 168(5) of the IA 1986, which provided for "… any person … aggrieved by an act or decision of the liquidator…" to apply to the court, Lord Richards opined firstly, that the difference in language of section 303(1) and section 168(5) made no difference to the scope of the two provisions; and secondly, that "any *person … aggrieved*" in section 168(5) will encompass creditors and, where appropriate, members of the company in liquidation *as well as any other person who can qualify as a "person aggrieved"*: para 6.

23. Lord Richards went on to note that although both sections express in very broad terms the persons who may apply to challenge a trustee or liquidator, the express terms are not to be given a literal reading and that on both principle and authority there are limitations on the persons who have standing to apply under those provisions: para 7. He expressly approved the observation made by Peter Gibson LJ in *Mahomed v Morris* [2000] EWCA Civ 46; [2000] 2 BCLC 536 where he stated at para 26: "It could not have been the intention of Parliament that any outsider to the liquidation, dissatisfied with some act or decision of the liquidator, could attack that act or decision by the special procedure of section 168(5)." Lord Richards then made clear that "neither section [303(1) or 168(5)] is intended to provide a means of redress to a party *with no connection* to the bankruptcy or liquidation": para 8. (Emphasis added.)

24. In addressing the limitations which would also apply to "bankrupts, creditors and others *who are connected* with the bankruptcy or liquidation" (emphasis added), Lord Richards, based on principle and the authorities, distilled at para 9 the following propositions:

> a. First, subject to very limited exceptions, a bankrupt or contributory in a corporate insolvency must show that there is or is likely to be a surplus of assets *once* all liabilities to creditors and the costs and expenses of the bankruptcy/liquidation have been paid.
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> b. Secondly, a creditor will not have standing except in respect of a matter which affects the creditor in his capacity as a creditor. As a matter of principle, this limitation applies also to bankrupts, even when they can demonstrate a surplus. In short, bankrupts must be affected in their capacity as bankrupts.
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> c. Thirdly, there are "other, very limited, circumstances which will provide standing to an applicant, whether or not the applicant is the bankrupt, a creditor or a contributory. … those circumstances are confined to cases where the challenge concerns a matter which could only arise in a bankruptcy or liquidation and in which the applicant has a direct and legitimate interest".

25. Lord Richards then explained, in turn, each of those propositions by reference to the provisions of the IA 1986 and the authorities.

The first category

26. In respect of the first, he observed that, on the making of a bankruptcy order, all property belonging to the bankrupt, with a few exceptions, vests in the official receiver or other trustee of the bankrupt's estate and is held on a statutory trust to be administered in accordance with the provisions of the IA 1986 and applicable Insolvency Rules. The bankrupt ceases to have any beneficial interest in his former property. This provides the rationale for the general requirement that a bankrupt must show that there is or is likely to be a surplus after payment in full and with interest of all debts in the bankruptcy and payment of all costs and expenses (including a trustee's remuneration) of the bankruptcy. Unless there is or is likely to be a surplus, the bankrupt has no legitimate interest in the administration of the bankrupt's estate and accordingly would lack standing under section 303(1) to challenge the administration by the trustee of the estate.

27. Lord Richards also took the opportunity to discuss circumstances where, despite there being no surplus nor the likelihood of one, a bankrupt will still have standing, by reference to the decision in *Engel v Peri* [2002] EWHC 799 (Ch); [2002] BPIR 961.

There, the bankrupt applied under section 282(1)(b) to annul his bankruptcy on the basis that all his debts would be paid in full out of third-party funds or secured by a payment into court. He was also required under the section to pay or secure all the expenses (including the trustees' remuneration) of bankruptcy. He was of the view that the trustee's remuneration and fees were excessive. He applied under section 303(1) to have them fixed by the court. The trustee objected on the basis that the bankrupt had no standing on the grounds that there would be no surplus after payment of all debts and expenses. Ferris J rejected the trustee's submission, holding that this was not a universal requirement. He held that what the bankrupt had to show was "some substantial interest which has been adversely affected by whatever is complained of" and that whether a bankrupt could do this depended on the facts of the particular case. On the facts, he found that the bankrupt had met this burden. Lord Richards observed regarding this decision that "it is an important, indeed critical, feature of *Engel v Peri* that the bankrupt was applying in his capacity as a bankrupt and in respect of an issue – the level of the trustee's costs and expenses which was directly relevant to an annulment of his bankruptcy – which arose only by reason of his bankruptcy".

The second category

28. Lord Richards illustrated the second category by reference to two authorities*, In re Edennote Ltd* [1996] 2 BCLC 389 ("Edennote") and *In re Edengate Homes (Butley Hall) Ltd* [2022] 2 BCLC 1 ("Edengate"). In both cases the applicants seeking to challenge the decision of the liquidator were in fact creditors of the company. However, what was shown was that they were not challenging the decision in their capacity as creditors but rather as disappointed prospective purchasers/bidders, and further, in *Edengate,* in the applicant's personal capacity as a defendant to legal proceedings. They accordingly had no standing.

29. At para 13, Lord Richards further observed: "The processes of bankruptcy and insolvent liquidation are primarily for the benefit of creditors. They necessarily have an interest in the proper administration by the trustee or liquidator of that process. Equally, though, their standing to challenge the trustee or liquidator is limited to matters which affect their interests as creditors under the statutory trust, and not in some other capacity."

The third category

30. The third category of very limited circumstances where standing was either accepted or withstood challenge was explained by Lord Richards also by way of examples from the authorities. This category may be considered as encompassing third parties or persons other than creditors whose rights or interests arise specifically out of the liquidation or bankruptcy. Where those rights or interests do not in any way depend on the company being in liquidation, standing will not have been made out. This was the

position in *Mahomed v Morris.* The applicants, pursuant to section 168(5) of the IA 1986 sought to set aside a compromise reached between the liquidators of BCCI and of Manlon Trading Ltd, settling a dispute relating to the ownership and proceeds of sale of various promissory notes. The applicants claimed an interest as sureties by way of subrogation, contending that BCCI was entitled to a greater number of the notes and that the compromise, being on less favourable terms to BCCI, adversely affected their subrogation rights as sureties. They were held not to have standing as it was not enough "that the person claiming to be aggrieved by the act or decision of the liquidator in respect of assets of the company is a surety when his subrogation rights do not in any way depend on the company being in liquidation" (para 26 per Peter Gibson LJ).

31. Another well-known example is *In re Hans Place Ltd* [1992] BCC 737; [1993] BCLC 768. There, the liquidator, pursuant to the power given under section 178 of the IA 1986, issued a notice of disclaimer of onerous property in respect of a lease. The disclaimer operated to terminate the rights, interests and liabilities in respect of the disclaimed property. The landlord applied pursuant to section 168(5) of the IA 1986 for an order setting aside the disclaimer on the grounds that it had the effect of terminating, as regards future liabilities of the company, a guarantee given by a third party. Although the application was refused, it was not because of lack of standing. The matter proceeded on the basis that the landlord had standing. Lord Richards observed that the parties and the judge were right to proceed in this way. He noted that disclaimer is a procedure uniquely available in the liquidation; it involves the exercise of a power specifically given to the liquidator in that capacity which directly affects the landlord, and the decision to disclaim is incapable of challenge save under section 168(5). He further noted that "[i]n the absence of clear words to contrary effect, Parliament cannot be taken to have conferred such a power on a liquidator without providing some means for the landlord to challenge it. The landlord is properly regarded as a person 'aggrieved by an act or decision of the liquidator'": para 27.

32. Lord Richards, having approved of the statement made by Peter Gibson LJ in *Mahomed v Morris* to the effect that Parliament could not have intended that any outsider to the liquidation dissatisfied with some act or decision of the liquidator could challenge it under the special procedure of section 168(5) and, while accepting that someone like the landlord in *In re Hans Place Ltd* could utilise section 168(5), also approved Peter Gibson LJ's further observation at para 26 that "it may be that other persons can properly bring themselves within the subsection". At para 76, Lord Richards, with reference to this category of limited circumstances in which a third party may have standing as arising directly out of provisions peculiar to the insolvency regime, as distilled from the authorities, observed: "[t]here may be other provisions, now or in the future, which could on a similar basis result in standing for a person aggrieved or dissatisfied with an act, omission or decision of the officeholder". He provided two examples, one being section 283A of the IA 1986 in respect of the question whether a bankrupt's home ceased to be part of the bankrupt's estate (a claim made unsuccessfully in *Brake*), and the other being section 283 of the IA 1986 concerning a claim by a bankrupt on whether tools, equipment and other property fell outside the bankrupt's estate.

33. Another example where a third party was held to have standing under section 303(1) of the IA 1986 was *Woodbridge v Smith* [2004] BPIR 247. There, a bankruptcy order was made in respect of the applicant's husband. Intending to apply to annul his bankruptcy, she paid all his creditors and was required to also pay the trustees' fees and expenses. She challenged the trustee's remuneration by application under section 303(1). Lord Richards endorsed the registrar's conclusion that she had standing to do so, the circumstances being analogous to those in *Engel v Peri* and *In re Hans Place Ltd*. Her application "concerned a matter which was unique to a bankruptcy or liquidation and was made by a person with a legitimate interest in making it": para 29.

34. *In re Cook* [1999] BPIR 881 provides a further example, albeit one which may be considered as being at the far end of the spectrum. A solicitor who was in possession of certain documents of the bankrupt protected by legal professional privilege was in an unenviable position faced by a demand by HMRC to produce those documents and under threat of suit by the bankrupt if there were compliance with the demand. The trustee purported to waive the bankrupt's privilege. The solicitor challenged the trustee's authority to do so by an application under section 303(1). It was held that the solicitor was not without standing to do so, though considered by the judge as being a person who came "at the extremity of the class of persons who may be dissatisfied". Lord Richards observed at para 30 that although the issue may have been raised in interpleader proceedings with the bankrupt, the trustee and HMRC as respondents, the judge was right to say that the solicitor could raise it under section 303(1) – the question of the trustee's authority, if any, to waive the bankrupt's privilege being one which concerned the extent of a trustee's statutory powers and therefore an issue peculiar to the bankruptcy. It is unlikely that this situation will arise in future as the English Court of Appeal has subsequently held in *Schlosberg v Avonwick Holdings Ltd* [2017] Ch 210 that a trustee has no such authority.

35. At paras 74−76 of *Brake* the principles with regard to standing as distilled from the authorities are succinctly summarised by Lord Richards. It is helpful to reproduce them here:

> "74. As the review of the authorities earlier in this judgment shows, standing under section 303(1) has been limited to (i) creditors applying in respect of conduct by a trustee which is adverse to their interests as creditors, (ii) bankrupts applying in respect of conduct by a trustee which is adverse to their interest in the estate, which necessarily requires showing a real prospect of a surplus in the estate, and (iii) persons (whether creditors, bankrupts or others) whose rights or interests arise specifically from the bankruptcy itself. The same approach has been applied to standing under section 168(5) of the IA 1986, with the necessary modification that, in the case of a company, there is not a bankrupt individual but there are contributories.

> 75. The first two categories reflect the legal position that a bankrupt's estate, and the assets of a company in liquidation, are held to be applied in accordance with the terms of the statutory trusts created by the applicable provisions of the IA 1986. As with any other trust, those interested in the assets or in their proper application are entitled to apply to court for relief for the protection of those interests. These categories are necessarily restricted to creditors in a bankruptcy or liquidation and, in the case of a bankruptcy or liquidation where there is or is likely to be a surplus, the bankrupt and contributories. Members of a company in a liquidation who may be liable to make contributions, for example members with nil-paid or partly paid shares or members of an unlimited company, would, I consider, be in the same position as creditors but this has not, so far as I am aware, been considered in any case.
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> 76. The third category comprises a very small number of other applications which have arisen directly out of provisions which are peculiar to the insolvency regime. As discussed above, the relevant cases have concerned the disclaimer of a lease (*In re Hans Place Ltd*) and the quantification of a trustee's expenses for the purposes of securing an annulment of the bankruptcy (*Engel v Peri* and *Woodbridge v Smith*). As Peter Gibson LJ said in *Mahomed v Morris* at para 26, the landlord in *In re Hans Place Ltd* had standing because it was 'directly affected by the exercise of a power given specifically to liquidators, and who would not otherwise have any right to challenge the exercise of that power'. There may be other provisions, now or in the future, which could on a similar basis result in standing for a person aggrieved or dissatisfied with an act, omission or decision of the officeholder. An example may well be section 283A of the IA 1986, under which the Brakes made an unsuccessful claim, as mentioned above. Another possible example discussed in argument was a claim by a bankrupt to tools, equipment and other property under section 283 of the IA 1986."

36. The first and second categories may be rationalised on the basis that these are persons to whom a liquidator in an insolvency or a trustee in bankruptcy owes a fiduciary duty. The third category are persons to whom no fiduciary duty is owed. As Lord Richards stated at para 87 of *Brake,*

> " …It is contrary to principle for a person to whom a duty is not owed to be able to seek relief in respect of a breach of that duty.

> If a trustee of a settlement or other trust, or a director of a company, takes steps in breach of fiduciary duty which interfere with the rights of a third party, the third party will have such rights (if any) in tort or otherwise against the trustee or director as the law provides, but the third party will not have any standing to seek relief for breach of fiduciary duty, as that duty is owed to the beneficiaries of the trust or (as the case may be) to the company. There is no reason to suppose that there was any legislative intention to enable such relief to be sought by third parties uniquely against trustees in bankruptcy under section 303(1) or against liquidators under section 168(5) of the IA 1986."

By analogy, this observation is equally applicable to relief sought by third parties against liquidators via the BVI IA's section 273 route.

The circumstances of this appeal

37. Lord Richards observed in *Brake* (para 96) that the question of legitimate interest in the relief sought is the starting point of the inquiry and not an answer to the inquiry itself. This calls for an assessment of all the factors relevant to making this determination, gleaned from the material placed before the court which provides the context in which the issue arose.

38. Mr Stevanovich does not fall, technically or otherwise, within the first or second category of persons who would ordinarily be considered a "person aggrieved". He does not claim to be a creditor or a member/contributory of the company. He is a former sole director. He would have therefore fallen to be considered within the third category of limited circumstances in which, as a third party, he can demonstrate that the decision of the Liquidators of which he complains directly affects his rights or interests and arises from powers conferred on liquidators which are peculiar to the insolvency regime. The focus of the inquiry then must be an examination of the factors for the purpose of deciding whether he meets these criteria.

39. The Main Proceedings have been instituted by the Liquidators against Mr Stevanovich pursuant to section 255 (fraudulent trading) and section 254 (misapplication) of the IA. They allege that Mr Stevanovich contravened section 255 and/or 254 of the IA and otherwise breached his fiduciary and other duties rendering him liable to repay, restore, account for, pay compensation or contribute to the Company's assets as the court considers proper or just, by way of improving the Company's insolvent estate to meet claims by creditors. It is not open to Mr Stevanovich to use the section 273 procedure to challenge the decision of the Liquidators to bring the Main Proceedings and he has not

sought to do so. The ability or power of a Liquidator to institute such proceedings is expressly provided for under the IA. Sections 254 and 255 of the IA are examples. The Main Proceedings are predicated upon the Company's insolvency brought about only by the admission of the Claim. Apart from the Claim of the US Trustee there are no other known creditors.

40. As earlier stated, Mr Stevanovich is actively defending the Main Proceedings. In para 36 of his Defence filed on 13 December 2017, he puts the Liquidators to proof of the Company's presence in US, and/or that the Company had submitted to the jurisdiction of the US Bankruptcy Court in relation to the Complaint. He also puts them to proof as to the legal and factual basis upon which the Claim was admitted. Additionally, in para 37 his case in defence of the Main Proceedings is that the US Bankruptcy Court lacked jurisdiction over the Company; that the Claim is not admissible in the Liquidation and was wrongly admitted by the Liquidators and, to that extent, does not give rise to a recoverable loss against him where none would exist *but for* their wrongful admission of the Claim. He has further pleaded that he will invite the court to set aside the admission of the Claim in the liquidation and, as necessary, to terminate the liquidation of the Company.

41. It was some 36 months after admission of the Claim in the liquidation and some 9 months after filing his Defence in the Main Proceedings, that Mr Stevanovich launched his application under section 273 of the IA seeking to reverse the Liquidators' admission of the Claim or alternatively for a direction to have the Claim expunged under section 210 of the IA.

Discussion

42. The authorities show that the class of persons who may be considered a "person aggrieved" is not exhaustive: see *Edennote* and *Brake* at paras 74-76. Who qualifies for the purpose of standing depends on an examination of all the factors which fall to be considered in any particular case and which bear upon the question whether an applicant has a legitimate interest in the relief sought: see *Brake* at para 96. This examination will include an assessment of the capacity in which the applicant applies. The fact that the applicant is a creditor (as was the case in *Edennote* and *Edengate*) or a bankrupt/former bankrupt (as was the case in *Brake*) does not suffice if it is shown that the application is not being made in that capacity.

43. Another factor which would carry significant weight, though not determinative, in respect of a third party applicant, is the availability of an alternative avenue of challenge. In *Mahomed v Morris,* Peter Gibson LJ at para 26, (endorsed by Lord Richards in *Brake* at para 28) accepted "that someone, like the landlord in *In re Hans Place Ltd* ... who is directly affected by the exercise of a power given specifically to liquidators, and who

would not otherwise have any right to challenge the exercise of that power, can utilise section 168(5)".

44. Then there is the decision in *In re Cook,* discussed by Lord Richards in *Brake,* which may have opened the gate slightly wider than Peter Gibson LJ's prescript in *In re Hans Place Ltd* regarding the availability to an applicant of an alternative avenue of challenge. Although an alternative avenue of challenge does not by itself determine the question of standing, both on principle and authority this would be a strong indicator in the overall assessment.

*Does the Claim arise from the exercise of powers conferred on liquidators which are peculiar to the insolvency regime**?***

45. In examining the factors, one of the questions to be resolved is whether the Claim arises from the exercise of powers conferred on liquidators which are peculiar to the insolvency regime. This aspect of the inquiry poses no difficulty. The power of a Liquidator to admit claims in the liquidation is beyond doubt. This is provided for under that part of the IA headed "CLAIMS". [See sections 208-215 IA]. It is a power conferred on liquidators which is peculiar to the insolvency regime. Here, Mr Stevanovich challenges under section 273 of the IA, the admission of the Claim which was submitted by the US Trustee, the sole creditor of the Company.

Does the Liquidators' decision admitting the Claim directly affect the appellant's rights or interests?

46. Another aspect of the inquiry is to determine whether the decision of the Liquidators admitting the Claim directly affects Mr Stevanovich's rights or interests. This assessment is a bit more nuanced given the peculiar circumstances of this case. Mr Stevanovich asserts that the admission of the Claim has directly affected his rights and interests because, says he, *but for* the admission of the Claim the Company would not have been rendered insolvent and the Main Proceedings seeking contribution would not have been commenced against him. Therefore, the reversal of the Liquidators' admission of the Claim will inevitably result in the discontinuance of the Main Proceedings.

47. Mr Stevanovich asserts further that the fact that he has challenged the admission of the Claim in his Defence in the Main Proceedings does not and should not lead to a lack of standing under section 273 of the IA. He should be able to pursue both avenues. He also says that as matters stand in the Main Proceedings, and despite the Liquidators saying he may challenge the admission of the Claim in the Main Proceedings, the court has not yet confirmed he may do so.

48. At this juncture, the Board records that during the hearing of the appeal, counsel for the Liquidators stated that the Main Proceedings are the appropriate forum for determining the question of the admissibility of the Claim and further, accepted (without prejudice to the merits of their case) that the claims in the Main Proceedings will not succeed if Mr Stevanovich can establish in those proceedings that the Claim ought not to be admitted. It would plainly follow that if it turns out the Claim was not admissible, the inevitable result would be an end to the Main Proceedings, since they rest upon the Company being insolvent in circumstances where the Claim represents the Company's only liability and the sole basis on which it has been rendered insolvent.

49. The Liquidators accordingly contend that Mr Stevanovich is not directly affected by their decision to admit the Claim. If he succeeds in his Defence in the Main Proceedings, the admission of the Claim by the Liquidators matters not to Mr Stevanovich one way or the other. He would have no liability to the Company. Conversely, were the Main Proceedings not brought against Mr Stevanovich, the rights or interests of Mr Stevanovich would similarly not be affected at all. He would be a stranger to the liquidation. There would be no right or interest of his affected by the manner in which the Company's estate is administered or distributed. He would have no standing to challenge the admission of the Claim or indeed any claims, were there others, as no right or interest of his would be affected one way or the other.

50. The Liquidators accept, in the Board's view rightly, that the course of the Main Proceedings hinges on the resolution of the issue of the admissibility of the Claim in the unusual circumstances of this case. Without seeking to direct or constrain in any way how the court below should conduct the Main Proceedings, it may be an appropriate course, in exercising its broad case management powers for the purposes of judicial economy and efficiency, to decide the admissibility of the Claim as a discrete or preliminary issue. It is appreciated that the US Trustee is not a party to the Main Proceedings, but it would be open to him to be joined should he so wish.

51. The sole connecting factor as it relates to Mr Stevanovich is the existence of the Main Proceedings brought against him in which the possibility exists that he may or may not be found liable to contribute to the Company's estate. Mr Stevanovich's interest may best be described as that of a defendant in respect of a contingent liability to contribute to the estate of the Company in insolvency which is dependent on the validity of the Liquidators' admission of the Claim. Mr Stevanovich is actively defending the Main Proceedings where the issue of the admissibility of the Claim will be decided. Whether an applicant has a legitimate interest in the relief sought is, as Lord Millett observed in *Deloitte & Touche AG v Johnson* [1999] 1 WLR 1605 ("Deloitte"), also a matter of judicial restraint. Although Lord Millett, delivering the judgment of the Board, made this observation in the context of an application by former auditors of an insolvent company to remove the Liquidators, and not pursuant to a provision similar to section 273, this approach is apposite to applications under section 273. Where an applicant has an alternate avenue of redress it would not be appropriate without more to allow a challenge

under the special procedure provided under section 273 in circumstances where no rights or interests directly touching upon or concerning the administration of an insolvent estate are affected. Such an approach would broaden the third category of cases identified by Lord Richards which has been regarded as a narrow one. No good reason has been shown for enlarging its scope to include a case such as the present.

52. Drawing all the strands together, Mr Stevanovich has not shown that his interest is directly affected by the Liquidators' decision to admit the Claim. In circumstances where the validity of that decision will be determined in the Main Proceedings, he has no legitimate interest in seeking to set aside or reverse the Liquidators' decision to admit the Claim. Accordingly, he is not a "person aggrieved" for the purposes of section 273 of the IA and lacks standing to pursue his challenge thereunder.

53. While the Board does not endorse the entirety of the Court of Appeal's observations contained at para 27(ii) of its judgment and appreciating that it did not have the benefit of the decision in *Brake,* its conclusion as to Mr Stevanovich's lack of standing, for the reasons given, should stand.

Section 210(2) IA

54. This leaves the application for relief under section 210(2) of the IA. That section reads: "The Court, on the application of the liquidator or, where the liquidator declines to make application under this subsection, a creditor, may expunge or amend an admitted claim if it is satisfied that the claim should not have been admitted or should be reduced." There can be no doubt that a liquidator is an officer of the court. Section 284 of IA expressly so states. Accordingly, as Lord Millett observed in *Deloitte*, "[t]he court's inherent jurisdiction to control the conduct of its own officers is beyond dispute" (p 1612). However, he went on to hold that the applicant in that case was not a proper person to invoke that jurisdiction being, among other reasons, a stranger to the liquidation and not a person with a legitimate interest in the relief sought.

55. The courts below took the view that section 210(2) was not applicable because the section spoke of an application made by a liquidator or a creditor, and no such application had been made. The courts below, seemingly, did not address their minds to the question whether the court, in exercising its inherent supervisory jurisdiction over its officers, had the power to direct a liquidator to make such an application if the circumstances warranted. In *Brake* [2020] EWCA Civ 1491; [2021] Bus LR 577, Asplin LJ, in the Court of Appeal, observed that in order to invoke this jurisdiction "it remains necessary to show that one has an interest in the bankruptcy itself and, therefore, has standing for the purposes of section 303(1)".

56. Mr Stevanovich accepts that an application under the court's inherent supervisory jurisdiction engages similar principles to those for determining standing under section 273. Mr Stevanovich, having failed under section 273 to show that he has standing as a "person aggrieved", fails, for similar reasons, to show that he is a proper person to invoke the court's supervisory jurisdiction to require the Liquidators to seek relief under section 210 of the IA.

Conclusion

57. For the reasons given, the Board humbly advises His Majesty that the appeal be dismissed.