

[2024]GRC059

IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)

IN THE MATTER OF:

**LES PRES DE JERBOURG LIMITED (IN COMPULSORY
LIQUIDATION)**

Application of Joint Liquidators for Directions

Decision on papers handed down: 27 August 2024

Before: Sir Richard McMahon, Bailiff

Applicants' representative: Advocate M D P Jones

Legislation and cases referred to:

The Companies (Guernsey) Law, 2008

Practice Direction No. 3 of 2015

Huelin-Renouf Shipping Guernsey Limited (unreported, 4 September 2015)

McPherson's Law of Company Liquidation

In the matter of CanArgo Limited (in compulsory liquidation) (unreported, 23 October 2020)

Denaxe Ltd v Cooper [2024] 2 WLR 142

Introduction

1. Les Pres de Jerbourg Limited was placed into compulsory liquidation by order of this Court on 3 October 2023. Benjamin Rhodes and Andrea Harris were sworn in as Joint Liquidators. They now seek the Court's directions, pursuant to section 426 of the Companies (Guernsey) Law, 2008, as amended, in relation to an issue that has arisen regarding who should now receive the residual funds after they have paid their own fees and expenses. This application is dated 16 August 2024 and is made for them by Advocate Martin Jones, who has also provided a short Skeleton Argument. The evidence in support is contained in an Affidavit of Andrea Harris, which she swore on 16 August 2024.
2. Paragraph 4 of Practice Direction No. 3 of 2015 provides that "*all applications to the Court for directions during the course of a Liquidation or Administration shall be made in written form and may be considered on the paper unless the Court directs otherwise.*" Although Ms Harris' Affidavit refers to the possibility of convening those who might be regarded as being affected by this application, being the sole director of Les Pres de Jerbourg Limited, Janice Dockerill, who was responsible for applying to place the company into compulsory liquidation, and who is also the executrix of the personal estate of Paul Chilcott, and Stephen Chilcott, who has

litigated about his late father's estate over the past decade or so, I am satisfied that there is no need to convene any other party to what is the Joint Liquidators' application for directions as to how they will conduct the final stages of this liquidation, and I am further satisfied that there is no need to direct that there be an oral hearing. As a result, I am able to determine this application on the papers.

3. I have decided that the Joint Liquidators do not need to convene any other party because Ms Harris explains that Janice Dockerill wishes to minimise expense and there is concern that Stephen Chilcott will raise issues that are not relevant to this application. Ms Harris suggests that this is apparent from an e-mail from him she exhibits as an example of the communications received, but I do not consider that what is set out therein by Stephen Chilcott is anything other than him raising concerns that he has about the administration of his late father's estate. I acknowledge that it has little relevance to the present application, but it is polite and succinctly sets out his position. The reason for being satisfied that neither of those persons need to be convened relates to this being an application for directions where I am satisfied that neither will raise any matter that cannot be addressed without convening them.

Background

4. Les Pres de Jerbourg Limited was registered on 20 April 2001, as company numbered 38257. As the First Affidavit of Janice Dockerill, sworn on 27 September 2023 in support of her application that this company be compulsorily wound up, a copy of which is exhibited to Ms Harris' Affidavit, has explained, this company was established by Paul Chilcott so that it could hold the real property, also known as Les Pres de Jerbourg, which he had purchased jointly with his late wife in 1978. Following his wife's death in 1981, Paul Chilcott became the sole owner of this land and he transferred the land into the company's ownership in May 2001.
5. Paul Chilcott died on 28 August 2008. By that time, he had remarried and he left his widow, Margaret Chilcott, as the executrix of his personal estate. Margaret Chilcott's daughter is Janice Dockerill. Margaret Chilcott then died on 13 December 2016, shortly after proceedings commenced by Stephen Chilcott and Jonathan Marquis had been settled by way of a Settlement Agreement dated 12 August 2016. After further litigation between Stephen Chilcott and Janice Dockerill, this Court decided that Janice Dockerill became the replacement executrix of Paul Chilcott's personal estate. Since that time, there have been various stages of litigation between Stephen Chilcott and Janice Dockerill about Paul's Chilcott's estate. I have some familiarity with these matters because I dealt with a lot of that litigation, culminating in a judgment handed down on 30 May 2022, which Ms Harris also exhibits, and which provides a detailed background about many of the issues that had arisen and which I do not need to repeat here.
6. Margaret Chilcott began the process of selling Les Pres de Jerbourg, as set out under the terms of the Settlement Agreement and, in particular, clause 1 thereof. Shortly before her death, Janice Dockerill was appointed as the director of the company and continued the process of selling Les Pres de Jerbourg. Although Margaret Chilcott was the party to the Settlement Agreement, by virtue of clause 4, after her death it bound her successor in title, being Janice Dockerill as her executrix. The land was conveyed to Lothlórien Limited on 27 December 2018. The purchase price was £2½ million. Since that time, the net proceeds of sale were held in an escrow account at Collas Crill. As Ms Harris further explains in her Affidavit, the balance was paid over to the Joint Liquidators on 13 November 2023. As such, it appears that the Joint Liquidators have realised the assets of the company, as required by section 419 of the 2008 Law.
7. Ms Harris also exhibits a draft Joint Liquidators' Final Report, which it is proposed will be placed before a Commissioner once one is appointed pursuant to section 417 of the 2008 Law. It sets out that the Joint Liquidators have not identified any preferred creditors or any unsecured

creditors. Further, they have not identified any state of affairs mentioned in section 417(5) by reference to sections 422(1), 433(1) or 434(2) having come to their attention.

The law

8. As has been stated previously, section 426 of the 2008 Law confers wide powers upon this Court to assist liquidators in the performance of their functions. Section 426 provides:

“The liquidator of a company may seek the Court’s directions in relation to any matter arising in relation to the winding up of the company and upon such application the Court may make such order as it thinks fit.”

The breadth of the areas on which assistance can be sought is apparent from previous decisions including *Huelin-Renouf Shipping Guernsey Limited* (unreported, 4 September 2015). In that case, I referred to the position as it was summarised *McPherson’s Law of Company Liquidation*, which I again consider to be helpful. As far as I am aware, the principles accepted in this jurisdiction remain applicable and the previous edition of the work, as quoted in that case, stated:

“The role of the section is to provide a procedure for a liquidator to obtain some guidance from the court in conducting a liquidation and so as to give protection against a claim for breach of duty. The provision is essentially concerned with action which is future at the time of the application being heard and provides an administrative non-adversary proceeding. This course is so frequently taken that little purpose would be served by attempting a catalogue of all the situations in which such an application may be made. Some examples which may be mentioned are where the liquidator wishes: to know whether to postpone the sale of certain assets; whether testamentary gifts to a charitable company that had gone into liquidation were ineffective; how to deal with a claim of a creditor; to institute proceedings for misfeasance; to admit a particular debt or claim to proof in the winding up; to make payments out of assets; to levy calls on contributories; to seek guidance on how to deal with the affairs of two related companies whose affairs are intermingled; to obtain guidance on questions of law; to seek guidance on the sale of a cause of action; to know how litigation should be conducted; and to seek resolution of issues of legal procedure. Although a direction given on such an application does not amount to a judicial determination raising an estoppel, the advantage of using this procedure is that, having obtained and followed the advice of the court with respect to a particular matter, the liquidator is then protected against any possible allegations of breach of duty which might subsequently be made against him or her by creditors or contributories of the company on the basis that the proceedings were not properly incurred. In fact the courts have said in cases of real doubt the correct procedure for a liquidator is to seek directions.”

9. Advocate Jones has referred to *In the matter of CanArgo Limited (in liquidation)* 2020 GLR 264. I do not fully understand quite he has done so when, at para. 19 of his Skeleton Argument, he explains that the facts in the present case “are very different from those in the two authorities referred to above”. He then suggests that the decision of the Joint Liquidators is a momentous one, engaging the *Public Trustee v Cooper* jurisdiction (as set out in para. 60, cited by him in para. 14 of his Skeleton Argument), that was found to be engaged in the *CanArgo* case. However, I am not persuaded that this is correct. What the Joint Liquidators wish to do is to depart from what is set out in section 419 of the 2008 Law. I do not regard this as a momentous decision engaging the *Public Trustee v Cooper* jurisdiction and so see little reason to have referred to this decision at all.
10. Similarly, the other case Advocate Jones cites (*Denaxe Ltd v Cooper* [2024] 2 WLR 142), in so far as it relates to the protection afforded to officers of the Court, does not, in my view, take

matters forward beyond what has previously been accepted in this jurisdiction in cases pursued under section 426 of the 2008 Law. As a result, I found very little of assistance in the Skeleton Argument. What the Joint Liquidators' application seeks is approval to pay the balance of surplus monies at the end of this liquidation to the executrix of Paul Chilcott's estate rather than in accordance with section 419 of the 2008 Law to the members recorded in the register of members. It is of no concern to the Joint Liquidators what the executrix then does and, if Stephen Chilcott wishes to complain that the executrix has not distributed the assets of the estate in her hands appropriately, giving directions to the Joint Liquidators will not prevent Janice Dockerill facing such proceedings.

Discussion

11. It may have been better if Advocate Jones had mentioned the default position set out in section 419 of the 2008 Law, which provides:

“(1) *Subject to the provisions of –*

- (a) *this Law and any rule of law as to preferential payments,*
- (b) *any agreement between the company and any creditor thereof as to the subordination of the debts due to that creditor to the debts due to the company's other creditors, and*
- (c) *any agreement between the company and any creditor thereof as to set-off,*

the company's assets in a winding up shall be realised and shall be applied in satisfaction of the company's debts and liabilities pari passu.

(2) *Any surplus shall thereafter be distributed (unless the memorandum or articles provide otherwise) among the members according to their respective rights and investments in the company.*

(3) *For the avoidance of doubt the distribution of any surplus under subsection (2) is not a distribution within the meaning of section 301 or for the purposes of section 303.”*

12. It is apparent from Ms Harris' Affidavit that the Joint Liquidators have realised the company's assets. As a result of section 419(2), any surplus assets, amounting to approximately £2.2 million, would be distributed to the members shown on the register of members exhibited to that Affidavit. The register of members shows that 67 of the issued shares are in the name of the late Margaret Chilcott, with the other 33 shares being in the name of Stephen Chilcott. Those changes were made on 11 August 2009. It appears there have been no changes since.

13. It may also have been helpful if Advocate Jones had referred to a decision I gave on an application for directions in *Eagle Holdings Limited (in compulsory liquidation) and others* [2023] GRC 005. Although the situation described therein differs, principally because it was a more complex corporate structure involved and it was more about distributions to creditors than what to do about any surplus, following the requirements of the 2008 Law strictly would (as explained at para. 27) have resulted in the liquidators “*not being able to take what they consider to be the fair and pragmatic course without incurring greater expense*”. The approach that the Joint Liquidators wish to take in this case is to disregard the strict requirements of section 419(2) and instead to rely on the terms of the Settlement Agreement rather than the company's register of members.

14. Again, it would have been helpful if Advocate Jones had addressed the different consequences under the 2008 Law, particularly bearing in mind what might be regarded as the alternative relief, or possibly, prior relief, sought by way of para. 3 of the Application. This refers to relying on the inherent jurisdiction of the Court for such further or other order thought fit *“including – if necessary – rectification of the Register of Members of the Company such that all of the shares would be recorded as belonging to Paul’s Estate”*. Somewhat bizarrely, in para. 20 of his Skeleton Argument, Advocate Jones suggests that the only decisions the Joint Liquidators have had to make, and for which the Court’s “blessing” is sought, are whether to seek rectification of the Share Register of the Company or, instead, to proceed as set out in para. 2 of the application and also whether to convene Stephen Chilcott, although that is not mentioned on the face of the application.
15. It is apparent that Les Pres de Jerbourg Limited is required to keep a register of its members at its registered office (section 123(2) of the 2008 Law). Section 123(3) then requires the entries in the register to give the names and addresses of the members, the date on which a person was registered as a member and the date on which any person ceased to be a member. In the register exhibited by Ms Harris, unless his position has changed, then the information for Stephen Chilcott is accurate. However, it still records Margaret Chilcott (Deceased) as a member with an address of Les Pres de Jerbourg. Given that she must have ceased being a member many years ago and that Janice Dockerill as her executrix was the director of the company, it is surprising that no step has been taken to update the register of members since the time of Margaret Chilcott’s death. In effect, although it does not form part of the Joint Liquidators’ application, they would struggle to pay the surplus in accordance with section 419(2) to the members shown on the register of members. However, what is proposed goes beyond treating Janice Dockerill as the executrix of Margaret Chilcott in place of her late mother. It is suggested instead that the executrix of Paul’s Chilcott estate should be treated as the holder of all the shares in the company.
16. Once the company was placed in compulsory liquidation, Janice Dockerill’s powers as the director of the company ceased under section 414(1) of the 2008 Law. (I have seen no suggestion that the Joint Liquidators have sanctioned their continuance.) Accordingly, now that the Joint Liquidators are responsible for the company, if there were changes that needed to be made to the register of members I take the view that they could have made those changes. They might even have chosen to take such steps if the situation of who were the members changed or they realised they had already changed but had not been given effect properly by the company previously without feeling the need to seek the Court’s directions under section 426. By way of example, if any member were to die after the appointment of the Joint Liquidators, they ought to record that change of ownership of the shares held by the deceased member so that the register of members would be accurate. So if they were given notice of a grant of probate from the Ecclesiastical Court (or from some other place in which the member died), then it might be appropriate to record whoever took responsibility for administering the estate as the member in place of the deceased former member. Similarly, if that arose before entering into office as Joint Liquidators but notification of an apparent error in the register of members came to light subsequently, then similar steps could, in my view, be taken. Because Les Pres de Jerbourg continues in existence until it is dissolved, even though it is in compulsory liquidation, the register of members should be accurate.
17. Paragraph 3 of the application seeks a direction about rectification, but not in accordance with section 426, but rather under the inherent jurisdiction of the Court. Whilst this has not been developed by Advocate Jones’ Skeleton Argument, I agree that this Court could not rectify the register of members though an application for directions under section 426 of the 2008 Law. Moreover, by reference to other instances where rectification is sought for something beyond correcting a mere administrative error, it might be more appropriate to sit with Jurats to determine a claim for rectification. Further, where a company may have committed an offence,

there might be an additional question as to whether the relief sought should be granted. However, none of this matters when I am not minded to grant the relief sought in para. 3.

18. In any event, correcting the register of members would only mean that Janice Dockerill, as executrix or in her own right if she has distributed her late mother's estate, should be recorded as a member alongside Stephen Chilcott. It would only be possible to change the register of members to show that the executrix of Paul Chilcott's estate held all the shares in the company if that follows from the terms of the Settlement Agreement or from the judgment I gave in 2022.
19. As I have already stated, the Settlement Agreement binds *inter alia* Janice Dockerill and Stephen Chilcott. It modified the terms of the will of Paul Chilcott, clause 6 of which I had set out in para. 8 of the 2022 judgment. Clause 6 had purported to bequeath half of Paul Chilcott's shares in Les Pres de Jerbourg Limited to Margaret Chilcott, with his residuary estate being shared equally between Margaret Chilcott and Stephen Chilcott. However, because there was little in Paul Chilcott's estate other than the shares in the company, Stephen Chilcott's *légitime* needed to be satisfied out of the estate, which is no doubt reflected in the adjustment noted in the register of members. However, the Settlement Agreement had the effect of adjusting what was to happen to the net proceeds of sale of Les Pres de Jerbourg.
20. Although this was not so relevant to the proceedings with which I dealt up to 2022, clause 2 set out what was to happen to those net proceeds of sale. This clause is quoted to the extent that it was necessary to set it out in para. 14 of that judgment. However, it will assist to repeat those provisions again:

- “2.1 *Once the Property has been sold, it is agreed between the Parties that the Defendant may deduct from the net proceeds of sale and retain by way of reimbursement to herself: (a) the Estate Expenses; (b) the Bequests totalling £50,000; and (c) any reasonable and properly incurred Future Estate Expenses properly notified to the First Plaintiff in accordance with Clause 1.1.7 above.*
- 2.2 *Once the Property has been sold and the deductions pursuant to clause 2.1 have been made, the Parties have agreed that the balance shall be split equally (50:50) between the First Plaintiff and the Defendant.*
- 2.3 *From the First Plaintiff's share of the net proceeds of sale of the Property, it is agreed that the Defendant may first deduct the following sums: (a) One hundred and seventy five thousand pounds (£175,000); and (b) the balance of the Legal Fees beyond the Payment into Court.*
- 2.4 *Once the Property has been sold, and the Defendant or her agent are in receipt of cleared funds, the Defendant agrees and undertakes to transmit the First Plaintiff's share of the sale proceeds, less the aforementioned deductions, to his nominated account within 7 days.”*

As can be seen, clause 2.2 adjusts the starting point from the split set out in Paul Chilcott's Will to make it an equal division of the balance instead. However, certain deductions can also be made from the share to be distributed to Stephen Chilcott.

21. In her Affidavit, Ms Harris has referred to para. 190 of the 2022 judgment, in which I made the comment:

“However, the core value of the Deceased’s estate was in the shares he held in Les Pres de Jerbourg Limited. When Les Pres de Jerbourg Limited sold Les Pres de Jerbourg in 2018, that company received the net proceeds of sale. Because the sale involved the land, rather than the shares in the hands of the Applicant as executrix, after settling the expenses that had been incurred by the company, which appear to be £6,451.50, that company had served its purpose and could be wound up or, if it were to be kept in existence for any reason, would pass the residual value following the sale of its only asset into the hands of the Applicant for the purposes of distributing the Deceased’s estate. Accordingly, in terms of accounting for the assets that formed the Deceased’s estate, the Applicant ought to have been in funds to the tune of the value of those two shareholdings, because the only other asset the executrix says was in the estate, the stamp collection, had already been distributed in accordance with the specific bequest to the Respondent. In other words, the shareholdings needed to be liquidated or, if not turned into monetary value, would be distributable to the beneficiaries of the estate as shares.”

22. Given that it was apparent in 2019 that the company had served its purpose, it is surprising that it took until 2023 for an application to be made in respect of it. It is also surprising, albeit understandable given the litigation that Janice Dockerill had faced as executrix, that this was not done by way of a resolution for voluntary winding up, particularly in light of the directions now sought by the Joint Liquidators who were appointed on her application for a compulsory winding up of the company.

23. I consider that it is also relevant to record what I set out in para. 192 of the 2022 judgment:

“The amounts that can be deducted from the net proceeds of sale were specified in Clause 2 of the Settlement Agreement (as already quoted). By Clause 2.1, the Estate Expenses, the bequests totalling £50,000 and the Future Estate Expenses fall to be deducted. The total of these amounts, as shown in the Account, is £174,510.43. By virtue of Clause 2.2, after these deductions have been made, the balance is divided into two. The Account presented by the Applicant deducts a further £258,383.19 in respect of legal fees incurred before the balance is divided into two. This is a step even beyond giving effect to the terms of the Settlement Agreement. In terms of accounting for the administration of the Deceased’s estate, even if giving effect to the terms of the Settlement Agreement can be regarded as stage two, because it results from an agreement between the beneficiaries of the estate and Margaret Chilcott as the executrix, this has less to do with the estate administration and more to do with a claimed right of set-off relating to the costs incurred where orders in respect of them are made (or may be made). Clause 2.3 of the Settlement Agreement refers to deductions to be made, as agreed, from the Respondent’s halfshare of the net proceeds. It was agreed that this stage follows the equal division of the balance of the net proceeds after the deductions agreed in Clause 2.1. Clause 2.3 refers to two permissible deductions from the Respondent’s share. The first relates to what had been provided to him as his advance on a distribution from the estate, being £175,000. The second relates to “the Legal Fees beyond the payment into Court”. This has crystallised at £115,000 in accordance with the terms of the Settlement Agreement. Both of these amounts should be taken from the Respondent’s half-share, with a corresponding increase in the share to Margaret Chilcott’s estate.”

All of these steps should have been taken by the director of the company once it was acknowledged that the company had served its purpose. In other words, it was in her own gift to have taken these steps rather than then seek to place the company into a just and equitable winding up, especially where the Joint Liquidators now wish to pay away the surplus in their hands otherwise than in accordance with section 419(2) of the 2008 Law.

24. I further take the view that it is appropriate to refer to the outcome of those proceedings. I made five declarations, as set out in para. 200, where I refer to Paul Chilcott as “the Deceased”:

- “(i) *at the date of the Deceased’s death, his personal estate included the shares he held directly and through a nominee in Les Pres de Jerbourg Limited and that company owned Les Pres de Jerbourg;*
- (ii) *at the date of his death, his personal estate also included his stamp collection (which was the subject of a specific bequest to the Respondent) and five shares in Adbikes Limited;*
- (iii) *before the date of his death, any bank accounts and other investments that had been held by him in the Deceased’s sole name, save for any ownership by him of Bryland Holdings Limited, were transferred into joint names or otherwise applied for the benefit of Margaret Chilcott, so that he had no such assets in his sole name and falling within his personal estate;*
- (iv) *the net proceeds of sale of Les Pres de Jerbourg accruing to Les Pres de Jerbourg Limited were £2,453,268 (as shown on the Collas Crill document dated 27 December 2018); and*
- (v) *whilst the Settlement Agreement dated 12 August 2016 operates, the deductions agreed therein, particularly in Clause 2, can be made to give effect to its terms because they modify the provision made by the Deceased’s Will.”*

For the purposes of the Joint Liquidators’ application, the first and the fifth of those declarations are the ones that matter.

25. The Settlement Agreement continues to operate because no steps have been taken successfully to set it aside. The shares in Les Pres de Jerbourg Limited held by Paul Chilcott and a nominee were beneficially his and so fell into his personal estate. Although it might be said that the terms of the Settlement Agreement should have been given effect in accordance in particular with clause 2 and steps taken by Janice Dockerill within seven days of receiving the net proceeds of sale, it is apparent that this did not happen. Subsequently, as recorded in para. 22 of the 2022 judgment, I ordered that the whole of those proceeds should be held in a Collas Crill Client account until the proceedings concluded. Those proceedings were determined by me on 17 August 2020, at which point, in the absence of any other order, that requirement lapsed. Stephen Chilcott attempted to appeal out of time in June 2021, but that application was refused by a single judge of the Court of Appeal the following month (as noted in para. 25). Despite that, there still has apparently been no steps taken to deal with the proceeds of sale under the terms of the Settlement Agreement.

26. I am satisfied, however, that there is still a requirement for Janice Dockerill, as the executrix of Paul Chilcott’s estate, to step into the shoes of her late mother and give effect to the deductions that are permissible and then to distribute the balance of Paul Chilcott’s personal estate. Until she takes that step, she will not have finished administering that estate. Although the Joint Liquidators have obligations under section 419(2) to distribute the surplus in their hands at the conclusion of the liquidation, I am also satisfied that it makes better sense to accede to their application to the extent that they can discharge their obligations by paying that surplus to Janice Dockerill for her to finalise Paul Chilcott’s estate rather than paying the surplus between a deceased person and Stephen Chilcott, as shown on the register of members.

27. I have already commented that I am not convinced that there is any need for para. 3 of the application to rectify the register of members. That register of members should, of course, be accurate, otherwise the company might be at risk of committing the offence in section 123(8) of the 2008 Law, and so would now be liable to a civil penalty. If, as a result of giving effect to the Settlement Agreement, it were appropriate to correct the register of members to show that all shares were held by Janice Dockerill in her capacity as the latest executrix of Paul Chilcott's estate, it would follow that the surplus in the hands of the Joint Liquidators as they conclude this liquidation would be distributed to her in that capacity. This is the primary reason why the bulk of para. 2 of the application can properly be granted and a direction given to the Joint Liquidators to do just that. In effect, the Joint Liquidators wish to be pragmatic and provide Janice Dockerill with the opportunity to do what she arguably could have done years ago.

28. However, although para. 2 seeks an order that:

“Pursuant to section 426 of the Companies Law, following the Joint Liquidators paying their fees and expenses (including legal costs), they may pay the residual funds held by the Company to the Executrix of Paul’s estate, to thereafter be distributed pursuant to the Settlement Agreement and the Judgment, notwithstanding those payments would not, directly, be in accordance with the shareholdings as recorded in the Share Register of the Company”,

it is of no concern to the Joint Liquidators what happens once they have paid away the surplus funds, as directed by this Court, so I decline to include in the order to be made any reference to how what is paid to the executrix of Paul Chilcott's estate is to be distributed.

Conclusion

29. For the reasons I have given, I am prepared to direct that the Joint Liquidators can pay the balance of the monies in their hands, after deducting their own fees and expenses, extending to properly incurred legal costs, to Janice Dockerill, as the executrix of the personal estate of Paul Chilcott rather than to those persons who appear on the register of members of Les Pres de Jerbourg Limited. This is a departure from the obligations found in section 419(2) of the 2008 Law, but I am satisfied that there is good reason to direct the Joint Liquidators to take this step. It will enable them to conclude this liquidation and any subsequent complaints of Stephen Chilcott will have to be dealt with by the executrix. As I have also explained, there is no direction given about how the executrix is to perform her remaining functions as executrix because that is not a matter in which these Joint Liquidators are interested.

30. There is no formal claim made in the Joint Liquidators' application for the costs of seeking this direction to be costs in the liquidation. The closest one gets is the reference in para. 2 of it to the Joint Liquidators to pay their expenses, *“including legal costs”*. This will ultimately be a matter for whoever is appointed as Commissioner pursuant to section 417 of the 2008 Law, also having regard to section 418, which provides that:

“All costs, charges and expenses properly incurred in the compulsory winding up of a company, including the remuneration of the liquidator, are payable from the company’s assets in priority to all other claims.”

It should not be assumed that all the costs incurred in seeking this order under section 426 should be treated as having been properly incurred. I have already pointed out that the Skeleton Argument of Advocate Jones has been of little use and covers matters that did not need to be covered and missed out commenting on matters that I consider should have been addressed, as will be apparent from reading this judgment. In those circumstances, I suggest the Joint

Liquidators might think twice before seeking to recover all of these costs when they present their accounts to the Commissioner. That said, in the absence of any claim for costs on the face of the application, the costs of preparing Ms Harris' Affidavit, which was needed to support the application would most probably have been reasonably incurred.