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*Judgment: approved by the Court for handing down*

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*(subject to editorial corrections)\**

14-94916

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
CHANCERY DIVISION (COMPANIES WINDING UP)**

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**IN THE MATTER OF SHERIDAN ENTERTAINMENTS LTD  
AND IN THE MATTER OF THE INSOLVENCY (NORTHERN  
IRELAND) ORDER 1989**

**BETWEEN:**

**PETER GERARD CURISTAN**

**Applicant;**

**and**

**THE OFFICIAL RECEIVER FOR NORTHERN IRELAND**

**Respondent.**

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**GIRVAN LJ**

[1] By summons issued on 25 September 2014 the applicant applies for an order under Article 143(5) of the Insolvency (Northern Ireland) Order 1989 (“the 1989 Order”) against the decision of the liquidator of Sheridan Entertainments Ltd (“Entertainments”) to transfer shares in Sheridan Operations Ltd (“Operations”) to another bidder. He claims that the liquidator, who was seeking to sell the shares, was at fault in refusing to disclose the highest bid and the level of that bid and in failing to refuse the applicant an opportunity to make a higher bid for the shares. The applicant also seeks a declaration that the liquidator of Entertainments was acting contrary to his general duties, powers and functions under the 1989 Order and was in breach of fiduciary duty under Article 176 of the 1989

Order. In addition he seeks an order rescinding a contract for the sale of the shares by the liquidator pursuant to Article 157 of the 1989 Order.

[2] Entertainments was ordered to be wound up by the court on 16 September 2010. The Official Receiver, the respondent in the application, was appointed as liquidator. Entertainments owns shares in another company Operations. Those shares, accordingly, represent an asset of the company in the liquidation and are realisable by the liquidator in the course of the liquidation. In October 2010 the applicant expressed an interest in purchasing the shares in Operations.

[3] In 21 December 2012 the applicant was adjudged bankrupt. He was automatically discharged from bankruptcy on 21 December 2013. As a result of his adjudication his assets vested in his trustee in bankruptcy and his liabilities became dischargeable in his bankruptcy.

[4] On 3 September 2014 a letter was sent to the applicant on behalf of the Official Receiver inviting a bid. It was indicated that a number of parties had expressed an interest in acquiring the company or part of it. The applicant placed a bid of £1,000 for the shares. He was informed on 10 September 2014 that his bid was not the highest offer. The applicant stated that he wished to submit a further figure for the shareholding but he required details of the higher bidder to avoid making a pointless lower offer. The Official Receiver's Office stated that it was not the liquidator's intention to reopen the offer process to disclose the winning bid. The Official Receiver stated that he was now in the process of arranging for his interest in the shares to be transferred to the highest bidder.

[5] The Official Receiver as a preliminary point in these proceedings contends that the applicant has no legal standing to bring the proceedings. Mr Gowdy's submissions on behalf of the Official Receiver can be summarised as follows:

- (a) The applicant has no legal interest in the liquidation of the company.
- (b) While he previously was a shareholder and a director of the company his shareholding vested in the Trustee and Bankruptcy and notwithstanding his discharge remains vested in the Trustee and Bankruptcy.

- (c) He was disqualified from acting as a director on his bankruptcy. In any event the powers and interests of a director cease on the commencement of a winding-up (Re Union Accident Insurance Company Ltd[1972] 1 All ER 1105.)
- (d) Standing to challenge the actions of a liquidator is limited to those with a direct financial interest in the liquidation.
- (e) The true nature of the applicant's application was as a disappointed bidder and therefore he claims as an outsider to the liquidation. He lacks sufficient interest to apply to the court as a person aggrieved under Article 145.
- (f) Standing under Article 176 is limited to the Official Receiver, liquidator, creditors and contributories. Thus the applicant lacks standing under Article 176. Nor has he a right to apply under Article 157 of the 1989 Order because he is not the respondent's counter party on a contract for the sale of shares in Operations.

[6] The applicant is neither a contributor nor a creditor in the liquidation of Entertainments since his interests as such vested in the trustee in bankruptcy and have not re-vested. He thus has no arguable standing under Article 176 of the 1989 Order.

[7] The Official Receiver has not accepted the applicant's offer for shares and was not bound to do so as a matter of simple contract law. The applicant thus has no standing under Article 157.

[8] The applicant's principal argument is that he is a person aggrieved for the purposes of Article 143(5) of the 1989 Order. Article 143(3) provides:

“(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the High Court; and a court may confirm, reverse or modify the act or decision complained of, or make such other Order as it thinks just.”

[9] While the wording of Article 143(5) is deceptively simple and while the applicant clearly feels a grievance in relation to the way in which the Official Receiver has conducted the sale of the shares case law authority is

against the applicant. For a party to be entitled to claim that he is “aggrieved” he must have some arguable legal interest or right which has been infringed by the actions or decisions of the liquidator. Nourse LJ put the position thus in Re Edenote Ltd [1996] 2 BCLC:

“It is neither necessary nor desirable to attempt a classification of those who may be persons aggrieved by an act or decision of a liquidator in a compulsory winding up. On the footing that the claims of secured creditors have been or will be satisfied, it is perfectly clear that unless and until there proves to be a surplus available for contributories (a most improbable event), ‘persons aggrieved’ must include the company’s unsecured creditors. If the liquidator disposes of an asset of the company at an under value, their interests are prejudiced and each of them can claim to be a person aggrieved by his act. Such was the position of the applicants here. Counsel submitted that they brought the application not as creditors but as persons who had not been given an opportunity to make an offer for the asset. In the latter capacity alone, like any other outsider to the liquidation they would not have had the locus standi to apply under section 168(5) (*the equivalent of Article 143(5)*). But even if that were wrong, they would still have been able to apply any dual capacity.”

[10] In that case the applicant’s counsel referred to section 20 of the Bankruptcy Act 1869, the precursor of the relevant provision and Nourse LJ said:

“Counsel said no doubt correctly that that was the progenitor of section 168(5), so that ‘any person aggrieved’ can be seen to be mere shorthand for ‘any creditor, debtor or other person aggrieved’. That appears to be self-evident, although I should record that the legislative development, in particular the importation of the expression into companies winding up was not fully traced. It did

not have to be. Even without the legislative history the meaning now is perfectly plain.”

[11] It is of course true that in Re Eden the applicants were in the case of one an unsecured creditor and a contributory of the company and in the case of the others were unsecured creditors. They clearly qualified as having locus standi on the facts. Nourse LJ’s line of reasoning was applied in Mohammed v Morris [2000] 2 BCLC 536. Jacob J held that the class of persons who could apply under section 168(5) was limited to creditors and contributories and others who were directly affected by the exercise of power given specifically to liquidators and who would not otherwise have any right to challenge the exercise of that power. An outsider to the liquidation, such as a person denied an opportunity to buy an asset of the company from the liquidators or a surety whose subrogation rights did not depend on the company being in liquidation, could not properly apply under section 168(5). The mere fact that the act or decision was that of a liquidator in respect of an asset of the company, the proceeds of which would be available for unsecured creditors was not enough. The applicants applied under section 168(5) as sureties claiming subrogation rights and thus they were not creditors in the liquidation of BCCI. They were seeking to enforce rights outside the liquidation. Therefore, they had no right to apply under section 168(5) and their appeal failed.

[12] Quite apart from the proper interpretation of section 143(5) of the 1989 Order the applicant has no legal basis for any justifiable legal grievance. As an under bidder in the sale of the shares he has no basis for claiming that the liquidator was bound by the ordinary principles of contract law to offer him an opportunity to increase his bid or to start what could have turned into a bidding war in relation to the sale of the shares. A under bidder has no legal right to require consideration to be given to a rebid. A contributory or creditor may have a justifiable grievance if the liquidator conducts the sale of shares in such a way as to fail to maximise the realised sum because in such a situation the liquidator’s actions may have resulted in the liquidator failing to secure the best price available for the asset. However, as insiders to the liquidation, contributories’ or creditors’ grievance lies in the economic disadvantage that they may suffer as a result of the liquidator’s actions. A person with no financial stake in the liquidation as such has no legal basis for asserting that he has a grievance under the 1989 Order and he has none under common law in relation to any contractual rights.

[13] The applicant asserted that he has issued proceedings in relation to what he claims to be fraud and conspiracy in the conduct of the liquidation of the various companies in the group. Whether such claims are valid or whether he is entitled to financial remedies are questions which do not arise in the present application which falls to be determined in accordance with the statutory context and framework set out in the 1989 Order.

[14] Accordingly, the summons must be dismissed on the ground that the applicant does not have standing to bring these proceedings.