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Case No: 3664 of 2012

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
The Rolls Building
EC4A 1NL

Date: 10/08/2012

Before :

MR JUSTICE NORRIS

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In the matter of Euromaster Ltd

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Daniel Warents (instructed by **Brachers LLP**)

Hearing dates: Friday 3 August 2012

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Approved Judgment (Subject to editorial corrections)

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE NORRIS

Mr Justice Norris :

1. Euromaster Limited ("Euromaster") was a company which carried on business manufacturing and installing structural steel work for the lift industry and providing finished architectural products such as door covers and decorative surrounds. It experienced financial difficulties in early 2012. In April 2012 the directors of Euromaster consulted MHA Macintyre Hudson, Insolvency Practitioners, to advise on a possible rescue of the business. Their advice was to restructure the business through a "pre-pack administration" in accordance with SIP 16, by selling the profitable part of Euromaster's business to a new company.

2. On 2 May 2012 the directors resolved to appoint Mr Dante and Mr Davis as administrators. Lloyds TSB Bank Plc held a qualifying floating charge over the assets of Euromaster although at the date of the resolution to appoint Mr Dante and Mr Davis there was no indebtedness to the bank secured by that charge. Paragraph 26(1) of Schedule B1 to the Insolvency Act 1986 ("Schedule B1") says that directors minded to exercise the power to appoint administrators conferred on them by paragraph 22(2) of Schedule B1 must give at least 5 business days' written notice to the holder of any qualifying floating charge who may be entitled to appoint an administrator. Accordingly the directors of Euro Master gave notice to Lloyds TSB in Form 2.8B of their intention to appoint an administrator. By paragraph 27(1) of Schedule B1 a person who gives notice of intention to appoint under paragraph 26 must file with the court as soon as is reasonably practicable a copy of that notice. A copy of Form 2.8B was filed with the High Court at 12:39pm on 3 May 2012. By paragraph 28(2) of Schedule B1 it is provided that:-

> "An appointment may not be made under paragraph 22 after the period of 10 business days beginning with the date on which the notice of intention to appoint is filed under paragraph 27(1)".

3. Lloyds TSB did not wish to exercise any power that they might have had to appoint an administrator, and on 17 May 2012 faxed a letter to Mr Dante and Mr Davis consenting to a sale of Euromaster's assets to a new company ("Newco").

4. The next day (at 12:30pm on 18 May 2012) notice of appointment in Form 2.9B was filed with the Court whereby the directors appointed Mr Dante and Mr Davis to be the administrators of Euromaster. That same day an Asset Sale Agreement was entered into by Euromaster, the administrators and Newco.

5. The Asset Sale Agreement provided for an immediate payment, for the payment of deferred consideration by 8 monthly instalments (supported by the personal guarantees of the directors of Newco) and the grant of a licence to Newco to occupy Euromaster's premises. Euromaster retained its book debts but appointed Newco as its agent to collect them in the return for a commission. The Asset Sale Agreement has been carried into effect, with all consideration due being paid, and with Newco collecting the book debts.
6. On 10 July 2012 it was noticed, during the course of a regulatory review, that the 18 May 2012 (on which date the directors filed at court their notice of appointment of Mr Dante and Mr Davis as administrators of Euromaster) was the 11th business day after the filing of the notice of intention to appoint. This case therefore raises the question

whether the appointment of Mr Dante and Mr Davis is a nullity (and if so, what is to be done for the future and what may be done in relation to the past)? Or whether their appointment was irregular (and, if so, whether that irregularity can be and ought to be cured, and with what consequences for past acts)?

7. This is a complex and technical area of the law containing conflicting decisions, all delivered under pressure of time and after hearing arguments on one side only. This case is no different. I intend to confine my answer to the questions posed to the particular circumstances of this case and to refer to wider issues only insofar as it is necessary so to do in order to resolve this case.

8. This case is not directly covered by the decision of any other judge. In Re: Cornercare Ltd [2010] EWHC 893 (Ch) HHJ Purle QC had to consider a somewhat similar situation to that before me. Directors gave notice of intention to appoint administrators, but there were funding difficulties in relation to a key proposal for the administration, so no notice of appointment was filed within 10 business days. The funding difficulties were then resolved. The question Judge Purle QC was called upon to answer was whether it would be possible immediately to start the process all over again. He said (at paragraph [10] of his judgment):-

> "It seems to me that what is being referred to in paragraph 28(2) is the particular filed notice of intention to appoint and that the effect of that subparagraph is that no appointment may be made out of time pursuant to that notice. It does not however prevent a fresh notice of intention to appoint from being served and filed, resulting in a fresh 10 day appointment window".

9. I respectfully agree with Judge Purle QC's conclusion as to what may be done when it is discovered (before an appointment is made) that the 10-day window has closed. But he was clearly not directing his mind to what were the legal consequences if by mistake an appointment was in fact made outside the 10-day window: and I would not take his summary of the effect of paragraph 28(2) as a fully considered and entirely comprehensive statement of the entire legal effect that paragraph. So I must answer the exact questions before me on principle.

10. Paragraph 28(2) says the "an appointment may not be made" after the 10 day window. This might impose a limitation on the exercise of the power which the directors undoubtedly have under paragraph 22 of Schedule B1: or it might impose a procedural requirement.

11. It is a formula which appears elsewhere in the Schedule. Paragraph 14 of Schedule B1 confers upon the holder of a qualifying charge the power to appoint an administrator. Paragraph 16 says the "an administrator may not be appointed" under paragraph 14 whilst the floating charge on which the appointment relies is not enforceable (either because the instrument is invalid or is void for want of registration, or because no event of default has occurred). Paragraph 17 says that "an administrator may not be appointed" if there is a provisional liquidator or administrative receiver in office (because it is not possible to have concurrent regimes in place).

12. Paragraph 22 of Schedule B1 confers on the company and on its directors the power to appoint an administrator. Paragraph 25 says that "an administrator may not be

appointed" if there is an extant winding-up petition or administration application or an administrative receiver is in office (because again it is not possible to have in place concurrent regimes). Paragraph 28(1) says that "an appointment may not be made" unless the notice requirements set out in paragraphs 26 and 27 have been complied with.

13. The question to be addressed is whether, if appointment is made in breach of the restriction in paragraph 28(2) the appointment (a) has no legal effect because it is a nullity or (b) has some conditional effect because it is defective or irregular and the irregularity may be regarded as curable. One cannot answer that question without at least having in mind consideration of whether the use of very much the same language in relation to the imposition of other restrictions means that the same answer must be given in every case, or whether a failure to observe the restriction might in one case lead to a nullity and in another lead to a merely defective appointment. In what follows I have that point in mind throughout.

14. The answer to the question is a matter of construction. In ascertaining the intention of the legislature Mr. Warents asked me first to look at some background material. In R (Westminster City Council) v National Asylum Service [2002] UKHL 38 Lord Steyn examined the role of the Explanatory Notes which accompany public bills in the process of enactment. He said (at paragraph [5]):-

> "The starting point is that language in all legal texts conveys meaning according to the context in which it is used. It follows that the context must always be identified and considered before the process of construction or during it…….Insofar as the Explanatory Notes cast light on the objective setting or contextual scene of the statute and the mischief at which it is aimed such materials are therefore always admissible aids to construction. They may be admitted for whatever logical value they have".

15. The Explanatory Notes to the Enterprise Act 2002 explain (at paragraph 643) that the procedure has been amended to "streamline the process" in particular by "the introduction of non-court routes into administration" because it was recognized that the existing procedure "was to a degree cumbersome". Mr Warents, Counsel for the applicants, submitted that if this was the policy objective then it would be wrong to riddle the out-of-Court process with a myriad of technical traps which might catch out all but the most cautious of appointors. He drew my attention to Re MF Global [2012] EWHC 1091 (Ch) in which Mann J expressed the view (at paragraph 16 of his judgment) that if doubts over the true construction of the notice provisions in Schedule B1 were causing Court appointments to be sought where out-of-Court appointments were available that would be "very unfortunate".

16. I agree that this is the context within which the provisions of Schedule B1 must be construed: see Re Virtualpurple Professional Services Ltd [2011] EWHC 3487 (Ch) at paragraphs [11] and [25](g). But recognizing that broad context is not a warrant for a lax approach to the process of construing the statute. The Explanatory Notes to paragraph 28(2) itself do not themselves support treating non-compliance as "a technical trap". Having referred to the 10-day window paragraph 663 simply says:-

> "If the 'notice of appointment' is not filed within this period the interim moratorium will cease to have effect and an administrator cannot be appointed."

So beyond describing the general context, I do not consider that the Explanatory Notes provide real assistance.

17. I propose to adopt the approach taken by HHJ McCahill QC in Hill v Stokes [2010] EWHC 3726 (Ch) at paragraphs [63] – [67], by HHJ Purle QC in Re Assured Logistics Solutions Ltd [2011] EWHC 3029 (Ch) at paragraph [33], and which I followed in Re Bezier Acquisitions Limited [2011] EWHC 3299 and Re Virtualpurple *(supra)* (which themselves have been followed by Arnold J in Re Ceart Risk Services [2012] EWHC 1178 and HHJ Purle QC in Re BXL Services [2012] EWHC 1877 (Ch)). This is to focus on the consequences of non-compliance and, taking into account those consequences, to consider whether Parliament intended the outcome of non-compliance to be total invalidity: in short, to ask whether it was a purpose of the legislation that an appointment made in breach of paragraph 28 to should be null.

18. The starting point is to try to identify the purpose of the 10-day window. The 10-day window opens with the date upon which the notice of intention to appoint is filed with the Court (not the date upon which the notice is given). If the circumstances are such that no notice of intention has to be filed then there will be no 10-day window. So the 10-day window must have something to do with the giving of notice of intention and be for the protection or benefit of those to whom such notice has to be given or who are affected by the consequences of such notice being given.

19. The notice of intention has to be given to those specified in paragraph 26(1) of Schedule B1 i.e. those with a security that confers a superior right to appoint someone to deal with the property of the company which they are or may be entitled to exercise. They must be given at least 5 business days' notice, during which time an appointment cannot be made. The purpose of giving the notice is clearly to afford the holder of the superior right the opportunity to establish whether its security is enforceable, to decide whether to make its own appointment under paragraph 14 of Schedule B1, and (if necessary) to give 2 business days' notice to the holder of any and every prior qualifying floating charge. The giving of the notice also affords the holder of the superior right the chance to conduct negotiations with the proposed appointors over the identity or terms of appointment of the proposed administrator or (in an extreme case) to prevent the company going into administration. Whilst it is understandable that a minimum period of 5 business days is specified for these purposes it is less apparent why a maximum of 10 days is set under paragraph 28(2) of Schedule B1 before the process has to start all over again (by service of a fresh notice of intention, as may be done according to the decision in Re Cornercare (*supra*)).

20. Notice of intention has also to be given to those prescribed in r.2.20(2) IRR 1986. Apart from the company itself, the addressees are those who are known to the directors to be currently exercising or seeking to exercise rights against the property of the company. No minimum notice has to be given to these persons: so it does not appear to be contemplated that they must have time to do anything in particular. If no

minimum period of notice is specified it is not readily apparent why a maximum of 10 days is set before the process has to start all over again.

21. A consequence of filing notice of intention to appoint is that under paragraph 44(4) of Schedule B1 an interim moratorium (relating to the commencement of other insolvency proceedings and the pursuit of other legal process) comes into existence. This affects creditors who have no notice of the intention of the directors to appoint administrators and lasts until the 10-day window expires (unless replaced by the full moratorium under paragraphs 42(1) and 42(2)). In my judgment it is this interim moratorium which explains the existence of the 10-day window. The interim moratorium cannot be open-ended. Once the directors have given notice of intention to appoint an administrator and gained the benefit of the interim moratorium they are to be afforded a fair opportunity to consider how the actual or imminent insolvency of the company is to be addressed in the event that the holder of a qualifying floating charge is not going to make an appointment under paragraph 14 of Schedule B1: and Schedule B1 identifies that a fair opportunity as a period of 10 days from the filing of a notice of intention.

22. What is the consequence of exceeding the 10-day window? If the expiry of the period prescribed in paragraph 28(2) is noticed then it is not possible to apply to the Court to extend time because the provisions of paragraph 107 of Schedule B1 do not apply to the time period specified in paragraph 28 (2). But the company or the directors may (if there continues to be a qualifying chargeholder) immediately serve a new notice of intention to appoint thereby opening another 10-day window and starting another interim moratorium: Re Cornercare (*supra*). If there is no longer a qualifying chargeholder then they may make an immediate appointment. Alternatively a different insolvency process can be commenced or completed under paragraph 42 of Schedule B1 which would have the effect of depriving the company or the directors of their power to appoint an administrator.

23. But if the expiry of the period mentioned in paragraph 28(2) is not noticed and an appointment is made outside the permitted period then the consequence appears to be that (absent the commencement of some other insolvency process) the administration commences five business days earlier than it otherwise would have done (had the expiry been noticed and a fresh notice of intention given). That is because the appointors have overlooked giving fresh notice of intention to the qualifying chargeholder (with its 5 business day minimum notice period).

24. Having regard to the purposes of paragraph 28(2) and the consequences of non-compliance can Parliament fairly be taken to have intended that an inadvertent appointment one day outside the 10-day window incurably invalidates the appointment of Mr Dante and Mr Davis i.e. that the appointment should be a nullity rather than merely irregular? In my judgment that question is to be answered in the negative.

25. First, whilst it is undoubtedly difficult, if not impossible, precisely to define what is "a nullity" and what is "an irregularity" Parliament may in 2002 be taken to have understood both that there is a difference between the two concepts and that the general policy of the law is to confine the concept of "a nullity" fairly closely. As to the first, the distinction as plainly drawn, as regards appointments, in Morris v

Kanssen [1946] AC 459 at 471-472. As to the second, the principle is clearly stated in Re Prichard [1963] 1 Ch 502. Under the Inheritance (Family Provision) Act 1938 proceedings had to be commenced by originating summons. Under the Rules of the Supreme Court ("RSC") an originating summons had to be issued out of the Central Office (and not out of a District Registry). RSC Order 70 provided:-

> " Non-compliance with any of these Rules … shall not render any proceedings void unless the Court … shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court … shall think fit".

A widow commenced her proceedings in a District Registry: she could have started afresh in the Central Office, but the fresh proceedings would have been out of time. Upjohn LJ (with whom Dankwerts LJ agreed) held at p. 523:-

> "… the law, when properly understood is that RSC Order 70 applies to all defects in procedure unless it can be said that the defect is fundamental to the proceedings. A fundamental defect will make it a nullity. The court should not readily treat a defect as fundamental and so a nullity, and should be anxious to bring the matter within the umbrella of RSC Order 70 when justice can be done as a matter of discretion, still bearing in mind that many cases must be decided in favour of the party entitled to complain of the defect *ex debito justitiae*".

This is a statement of principle about procedural rules of wider application than its immediate context: for a recent example in an insolvency context see the observations of Chadwick P in HSH Cayman I GP Limited 2010 (1) CILR 114 at paragraphs [37] to [40]. (It is right to record that in Re Pritchard the Court of Appeal held that the issue of the originating summons was a nullity because a District Registry had no power to issue such originating process). I am therefore be disinclined to treat non-compliance as leading to nullity if on a fair reading of the language and applying the approach set out on R v Soneji [2005] UKHL 49 it may be treated as an irregularity.

26. Second, in my judgment considerable weight should be given to the consideration that the object of introducing out-of-court appointments was to streamline the process of business rescue: I adhere to the view which I expressed in Re Virtualpurple Professional Services Ltd that it is highly undesirable to have a multiplicity of circumstances in which the appointment of an administrator is automatically invalidated.

27. Third, Schedule B1 contains a mixture of provisions, some of which are naturally read as defining the circumstances in which the power to appoint arises and some of which are naturally read as prescribing procedural requirements that must be fulfilled before the appointment is properly made. If an appointment is made in circumstances where there is no power to appoint then the purported appointment would naturally fall to be treated as a nullity. I will give two examples. In Re Minmar (929) Ltd [2011] EWHC 1159 (Ch) the appointment was a nullity because there was no quorate meeting of the directors, the board had never properly resolved to do anything and those who attended the meeting had no power to appoint. In Re Blights Builders [2006] EWHC

3549 the appointment was a nullity because the company had no power to appoint administrators by reason of the existence of an undisposed of winding up petition. If the appointment is made in breach of some other requirement more of a procedural nature then the purported appointment would naturally fall to be treated as irregular. That was the view taken by HHJ Purle QC of the "minor deficiencies" in Re Assured Logistics Solutions Ltd (*supra*) and by Arnold J in Re Ceart Risk Services (*supra*) of the requirement to obtain the consent of the FSA.

28. I consider that this distinction is reflected in the terms of Schedule B1 itself as regards appointments by directors. Paragraphs 22 to 25 inclusive specify when it is that the directors or the company have the power to appoint administrators. Paragraphs 26 to 32 set out the procedural requirements for the exercise of the power. The structure of the Schedule suggests (albeit not strongly) that the Court should treat non-compliance with the requirements set out in paragraph 28 as leading to an irregularity rather than the nullity.

29. Fourth, the mere fact that the non-compliance relates to a time limit does not of itself compel the conclusion that the defect is fundamental and the purported act a nullity. R v Soneji (*supra*) which establishes the correct approach to construction was itself a case of doing an act outside the prescribed time limit: and the reasoning involved a consideration of other "time limit" cases (see the speech of Lord Steyn at paragraphs [16] to [19]. One has to inquire as to the purpose of the time limit. As explained above, the purpose of having a 10-day window will have been served (even if the appointment is made outside that window) and the consequences of not observing the time limit are not so serious as to require any breach automatically to render any subsequent act a nullity.

30. Fifth, I do not consider that the use of the words "an appointment may not be made" compels the conclusion that paragraph 28(2) imposes a fundamental requirement. It is true that broadly the same words are used whether they are circumscribing the power to make an appointment or setting out the procedural requirements for a proper exercise of the power. But I do not think that the use of the same verbal formula is to be taken as an indication that Parliament intended the same consequences to follow whatever the nature and seriousness of the departure from the requirements of Schedule B1. One still has to ask whether it was a purpose of the legislation that an act done in breach of the provisions should be invalid.

31. Sixth, although I recognise that to treat non-compliance with the 10-day window as a nullity may not be the end of the day, because of the possibility of making an administration order with retrospective effect, I am strongly inclined to avoid the artificiality of that course. Moreover, a retrospective order does not have precisely the same effect as upholding the validity of the original appointment: in particular the provisions of section 240(3)(a) and (b) IA 1986 would give very different dates for "the onset of insolvency" for the purpose of reviewing pre-insolvency transactions. I do not consider that Parliament should be taken to have intended such artificiality or technicality.

32. For these reasons I would hold that the appointment of Mr Dante and Mr Davies as administrators was the regular but was not a nullity. What then is the consequence of that?

33. Once the conclusion is reached that the appointment of the administrators was not a nullity then in my judgment the provisions of IR 7.55 are engaged. This rule provides:-

> "No insolvency proceedings shall be invalidated by any formal defect or by any irregularity, unless the court before which objection is made considers that substantial injustice has been caused by the defect or irregularity, and that injustice cannot be remedied by any order of the court."

34. This was the view of HHJ Purle QC in Re Assured Logistics Solutions Ltd (*supra*) at [33]-[34] where he held:-

> "In my judgment, however, it is wrong to regard failure to give a notice to those additionally prescribed as necessarily fatal to the appointment, thus treating the appointment as a nullity. The failure to give the requisite notice is, however, a material consideration when the court comes to exercise a discretion as to whether or not the court should, in the light of formal defects or irregularities, set an appointment aside, or remove administrators irregularly appointed. The court would then have to look at all the circumstances of the case, but the appointment, once completed by the filing of the appropriate form and documents, and then sealed by the court, would be good, and the onus would be on those challenging the appointment to demonstrate why it should be set aside. ….. IR 7.55 may also be relevant in this context … Rule 7.55 has not hitherto proved to be of significant help in this area of the law, but the cases where it has been held to be inapplicable … may be characterised as cases where the defect in question has resulted in the appointments in question being treated as nullities. If a particular appointment is a nullity because some essential precondition has not been complied with then … no insolvency proceedings ever come into being and IR 7.55 can have no application. The position must in my judgment be different, however, in cases where the irregularity in question is not necessarily fatal to the appointment"

I entirely agree with this view.

35. In Re G-tech Construction Ltd [2007] BIPR 1275 Hart J proceeded on the footing that the failure to file the correct form at court meant that "a necessary prerequisite" to an appointment taking effect had been omitted and there were no "insolvency proceedings" to which IR 7.55 could apply. IR 7.55 did not apply because the appointment was treated as a nullity.

36. In Re Blights Builders Ltd [2006] EWHC 3549 (Ch) I held that IR 7.55 did not provide a means of validating an appointment which the company could not make (the company having no power to appoint administrators by reason of the existence of an undisposed of winding up petition), because the failure to satisfy the statutory criteria for the exercise of the power to appoint represented a fundamental flaw which could not be remedied under a regularisation provision. This remains my view. But I gave two other reasons for the inapplicability IR 7.55.

37. First I expressed the view that the process of appointment under paragraph 22 was not an "insolvency proceeding" for the purposes of the rule. This view was rejected by Henderson J in Re Frontsouth (Witham) [2011] EWHC 1668 (Ch): and rightly so. Having subsequently had the opportunity to consider Re G-Tech Construction (Hart J's reasoning penetrates the garbled account of his words in paragraph [11]) I agree that the term "insolvency proceedings" is used in a sense wide enough to encompass out-of-court appointments: and I have since applied that approach (see Adjei v Law for All [2011] EWHC 2672 para [8]). I also note that in Re Cornercare HHJ Purle QC plainly considered the process of appointment under paragraph 22 to be an insolvency proceeding which might in appropriate circumstances constitute an abuse of the court process.

38. Second, I expressed the view (with which Henderson J agreed in Re Frontsouth, a reserved judgment) that the language of IR 7.55 suggests that it was not intended to apply to fundamental defects, because it does not make much sense to talk of an invalid appointment causing "injustice". I think that view ought to be revisited in the light of the emerging distinction between non-compliance which leads to a nullity and non-compliance which leads to an irregularity. Now that there is a focus upon the purpose of the relevant requirement and upon the consequences of non-compliance, it seems to me less troubling to say that someone who wishes to rely on the defect must show (a) that substantial injustice has been caused by the defect, and (b) that that injustice cannot be remedied by some order of the court short of an order invalidating the entire insolvency proceedings.

39. In Re Pillar Securitisation SARL [2010] EWHC 836 (Ch) Proudman J held that in the case of a fundamental flaw going to the validity of the appointment itself IR 7.55 could not be applied "since relief can only be granted once insolvency proceedings have begun". The observation was made in the context of holding that the use of the wrong for entirely invalidated the purported appointment. The situation with which I am now dealing accordingly did not arise the consideration.

40. In my judgment nothing in these cases prevents me from holding that in the case of an irregular (as opposed to a void) appointment of administrators such as that before me the position is governed by IR 7.55.

41. The question then is to what relief are the administrators entitled? Plainly they could continue to conduct the administration and await somebody taking objection to the manner of their appointment and asserting that the commencement of the administration five business days earlier than would have been the case if the precise terms of Schedule B1 had been followed has "caused" substantial injustice to the objector. Lloyds TSB Bank plc does not so assert. It is unlikely that any general creditor (who stands to receive a distribution of between 30p and 40p in the £ once the final instalment of deferred consideration is paid and the final book debts collected) will wish to do so either. Notice of the appointment was given in the Gazette on 23 May 2012. Nobody challenged it then or has done since. Nobody has challenged the Asset Sale Agreement.

42. But the administrators would like an order waiving the defect in their appointment. Mr Warents submitted that if the court has power to dismiss an objection that is made under IR 7.55 then logically it must have the jurisdiction to rule upon the continuing

validity of an appointment that is affected by a defect or an irregularity but does not amount to a nullity. I do not agree. The fact that I could dismiss an application if made does not mean that I can prevent an application being made at all. I could (and am willing to) declare that Mr Dante and Mr Davis are in office as administrators of Euromaster and will continue to be so (subject to any application that is made under IR7.55): and that (pursuant to paragraph 104 of Schedule B1) no prior act of theirs in the administration is invalidated by reason only of the defect in their appointment. But I do not consider that on an application to which the administrators and the directors are party but the creditors are not (extremely short notice of the making of the application was given to the creditors) I can go any further. Plainly any creditor would face great (if not insuperable difficulties) if the administrators were to inform the creditors (at the initial meeting of creditors) of the tenor of this judgment, and to indicate that any challenge to the administration must, in the interests of the creditors as a whole, be brought before the administrators give notice of intention to make a distribution or to exit the administration into a CVL.

43. I will extend the time for the holding of the initial meeting of creditors for 28 days from the date of this judgment.

44. The applicants have indicated that they do not intend to seek an order that the costs of and occasioned by this present application be treated as an expense of the administration. That is entirely commendable, and an example to be followed by others. The directors or those advising them have made a mistake: and there is no reason why the sums available for distribution amongst the creditors should be depleted by the costs of any corrective action.