

## Insolvency & Corporate Restructuring

### SUPREME COURT: UK SECRETARY OF STATE ENTITLED TO BE TREATED AS A PREFERENTIAL CREDITOR IN A WINDING UP

#### Bell Lines Limited (in Official Liquidation)

LK Shields Solicitors acted for the Secretary of State for the Department of Business Innovation and Skills of the Government of the United Kingdom (the Secretary of State) in a Supreme Court Appeal which raised a succinct technical point in a liquidation.

Bell Lines Limited was placed into Official Liquidation in 1997. 174 of its employees based in England and Wales were made redundant. These employees had claims in the Liquidation for wages, holiday pay and pension contributions which enjoyed preferential status to the limited extent provided for in Section 285(2) of the Companies Act 1963. The Insolvency Service (on behalf of the Secretary of State) discharged those payments to the employees as it was obliged by law to do so by virtue of EC Directive 80/987 and the European Court of Justice decision in *Everson and Barrass -v- Secretary of State for Trade and Industry and Bell Lines Limited* [1999] EC C-198/98.

The Secretary of State sought to be treated as a preferential creditor pursuant to the 1963 Act and to be reimbursed by the Official Liquidator of Bell Lines Limited on the same basis as the Irish Minister would be.

Following an application by the Official Liquidator to the High Court for a determination that the Secretary of State should be admitted as a preferential creditor, the High Court held that Section 285 of the 1963 Act only entitled the Secretary of State to be treated as an ordinary creditor although the Irish Minister would be afforded preferential status in similar circumstances.

The Official Liquidator appealed the High Court decision with the support of the Secretary of State (who was heard as a Notice Party to the Appeal). The Port of Waterford Company, representing the general body of unsecured creditors, opposed the Appeal and argued that the Secretary of State should only be admitted as an ordinary creditor.

The matter was heard by the Supreme Court on 20 January 2010. In summary, the Supreme Court had to decide the following question:

*Does a body which pays off preferential creditors step into the shoes and benefit from the preferential status of those creditors for purposes of Section 285 of the 1963 Act?*

To answer this question, the Supreme Court examined whether the text of Section 285(6) of the 1963 Act was capable of being interpreted to grant preferential status to the payments made by the Secretary of State. Section 285(6) provides:

*"Where any payment has been made... [to an employee] in the employment of a company... on account of wages... holiday remuneration... or ... superannuation benefit... out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced..."*



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The general body of ordinary creditors argued that Section 285(6) did not apply to the payments made by the Secretary of State to the former employees of Bell Lines Limited for the following reasons:

1. The use of the word "advance" only applied to a financial institution which lent money to the company;
2. Reference to a payment "out of" a sum advanced required payment to the company or another intermediary, out of which the employee then received payment; and
3. The use of the phrase "in the employment of a company" meant that the subsection could not apply to persons who were technically former employees of the company.

It was argued on behalf of the Secretary of State that the wording of Section 285(6) did not prevent the Secretary from being treated as a preferential creditor and that a "*benevolent interpretation*" of Section 285(6) should be adopted by the Court.

In a unanimous decision delivered by Mr Justice Fennelly, the Supreme Court rejected each of the three above-mentioned arguments made on behalf of the body of creditors and held that Section 285(6) entitled the Secretary of State to be treated as a preferential creditor in the Liquidation.

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#### About LK Shields Solicitors

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