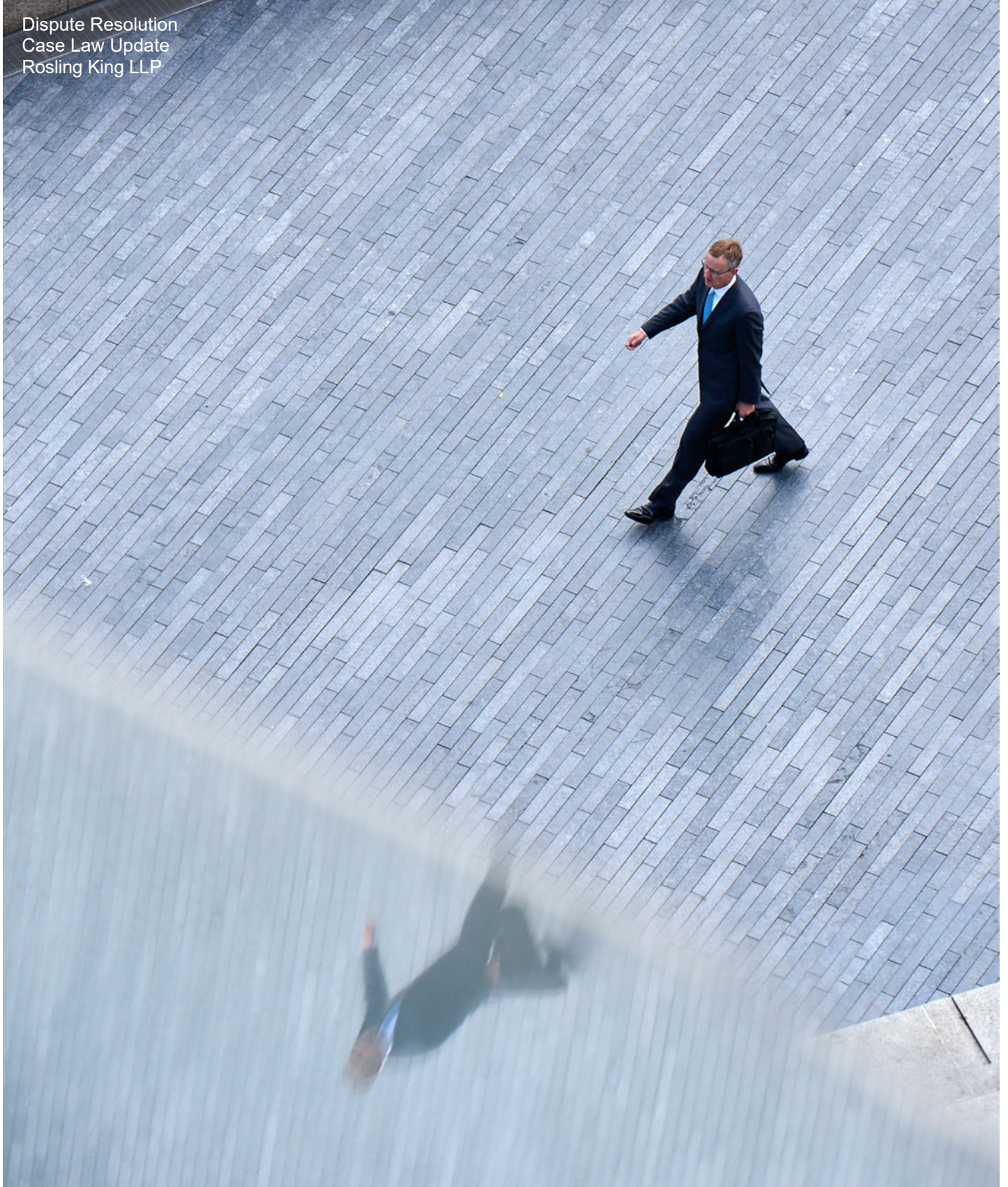


Dispute Resolution
Case Law Update
Rosling King LLP



[Lock v Stanley and Another \(Re Edengate Holmes Ltd\) \[2022\]](#)

On 16 September 2022, the Supreme Court refused permission to appeal the Court of Appeal's decision in *Lock v Stanley* handed down on 9 May 2022 on the basis that the application for permission to appeal did not raise an arguable point of law which could lead to a successful outcome for the appellant and that the appellant has no real prospect of success on the issue as to perversity. The decision reinforces the high threshold required to successfully challenge the assignment of claims, as well as the Courts' hesitance to interfere in the commercial decisions of insolvency practitioners.

[Background](#)

The claimant, Mrs Lock, was a creditor, and former director of Edengate Homes (Butley Hall) Ltd (in Liquidation) (the "**Company**"), a company whose only asset was a claim against her and members of her family. In March 2012, Mrs Lock and her husband formed the Company as a special purpose vehicle to acquire and develop Butley Hall, Prestbury, Cheshire. The Company was unable to raise sufficient funds to meet its liabilities under the project and by November 2015 the Company was insolvent. On 26 November 2015, the Company went into creditors' voluntary liquidation and liquidators were appointed.

Following an investigation by the liquidators, it was discovered that there were potential transactions at an undervalue and statutory preference claims against the claimant, her husband, and others. The liquidators went on to assign these causes of action and statutory claims to a specialist insolvency litigation financing company, Manolete Partners plc ("**Manolete**").

Mrs Lock sought an order to set aside this assignment under Section 168(5) Insolvency Act 1986 (the "**Application**"), which states that if any person is aggrieved by an act or decision of the liquidator, that person may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order in the case as it thinks just. The Application was based on the notion that (a) Mrs Lock had the required standing and (b) the liquidator's decision to enter into the Assignment was perverse due to his failure to take legal advice or appropriately survey the market for potential assignees (including allowing the claimant to make a competing offer).

HHJ Halliwell first considered whether as creditor of the Company, Mrs Lock did in fact have the standing to make the Application. On examination, he concluded that she did not. He agreed with the liquidators' argument that she did not have standing as her own interest was adverse to the class of interest of the creditors as a whole. Her interest was in relation to herself and her complaint was in fact with the "proceedings against herself and her family as opposed to the contractual relationship between the liquidator and Manolete".

Whilst HHJ Halliwell held that Mrs Lock did not have the required standing to bring the Application, he did consider whether the assignment itself should be set aside for perversity. Following the test set out in *re Edencote Ltd [1996] 2 BCLC 389*, HHJ Halliwell considered "*whether the liquidator's conduct [amounted] to something so utterly unreasonable and absurd that no reasonable person would have done it*". He also noted the judgment of Sir John Vinelott

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in Edennote where he stated, “*it is only in very exceptional circumstances that the court will interfere with the exercise by a liquidator of his discretion to sell the assets of an insolvent company*”. Ultimately, it was held that the test had not been satisfied. The liquidator had approached another creditor and there was no evidence to prove that better terms may have been achieved with another party. Therefore, the assignment to Manolete could not be considered perverse. Mrs Lock went on to appeal both aspects of the judgment in the Court of Appeal.

The Decision of the Court of Appeal

The Court of Appeal upheld the decision of HHJ Halliwell and refused to set aside the assignment to Manolete. In doing so, they agreed with his reasoning that Mrs Lock did not have standing nor had the threshold for perversity been met.

The Decision of the Supreme Court

The Supreme Court dismissed the Application concluding that the application did not raise an arguable point of law which could lead to a successful outcome for the appellant and that the appellant has no real prospect of success on the issue as to perversity.

Commentary

The decisions of both the Court of Appeal and the Supreme Court reflect the Courts’ longstanding reluctance to interfere with the commercial decisions made by office holders, including commercial decisions made by an Insolvency Practitioner, such as a liquidator. Ultimately, the liquidator is appointed to act instead of the directors of a company and in doing so they will take commercial decisions for the benefit of the company/liquidation.

Furthermore, it confirms that any party seeking to challenge an assignment made during insolvency proceedings must clear a very high threshold to satisfy the test of perversity. A fact which is likely to give confidence to both insolvency practitioners and litigation funders alike.

Should you wish to discuss this in more detail, please do not hesitate to contact [Kate Rigby](#) or the Partner with whom you usually deal.