Neutral Citation Number: [2026] EWHC 2394 (Ch)

Case No: CR-2025-004409

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 21 September 2026

Before

MR JUSTICE TROWER

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IN THE MATTER OF PRAX LINDSEY OIL REFINERY LIMITED (IN LIQUIDATION)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Between :

GLENCORE ENERGY UK LTD.

Applicant

- and -

PRAX LINDSEY OIL REFINERY LIMITED (IN LIQUIDATION)

Respondent

Mr Edward Cumming KC and Ms Erin Hitchens (instructed by **Jones Day**) for the **Applicant**
Mr Joseph Curl KC and Ms Clara Johnson (instructed by **Slaughter and May**) for the **Respondent**

Hearing dates: 28 - 29 July 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 21 September 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE TROWER

Mr Justice Trower:

1. This is an application by Glencore Energy UK Ltd ("Glencore") under section 130(2) of the Insolvency Act 1986 ("IA 1986") seeking leave to commence and proceed with a claim against Prax Lindsey Oil Refinery Limited (in liquidation) ("PLOR"). In this judgment, unless the contrary appears, references to section numbers are to sections of the IA 1986 and references to rule numbers are to the Insolvency (England and Wales) Rules 2016 (the "Rules").

2. The heads of relief sought in the draft particulars of claim are equitable rescission of five sales confirmations (the "Relevant Sales Confirmations") pursuant to which Glencore supplied crude oil to PLOR worth in excess of US$230 million, an account of profits, a declaration that certain oil and/or its traceable proceeds are held on constructive or resulting trust for Glencore and consequential orders for delivery up. The application was issued on 19 December 2025 and alleges that the Relevant Sales Confirmations were induced by fraudulent misrepresentations made by PLOR prior to its liquidation. It pleads that it is a substantial victim of PLOR's fraud.

3. PLOR was a member of the Prax group of companies (the "Group") which dealt in crude oil, petroleum products and biofuels. The businesses of the Group included oil exploration and production, oil refining and storage and the selling of refined product. PLOR owned and operated a refinery at North Killingholme in North Lincolnshire (the "Refinery") located close to the Immingham oil terminal. At the material time, the Refinery was one of six major refineries in the United Kingdom, providing approximately 10% of the country's petrochemical supply.

4. At the end of June 2025, a number of key companies in the Group went into compulsory liquidation and administration. On 30 June 2025, a winding up order was made against PLOR by Michael Green J on a winding up petition presented the day before by PLOR's sole director, Mr Winston Soosaipillai. The Official Receiver (the "OR") thereupon became (as he remains) its liquidator, assisted by four special managers from FTI Consulting LLP (the "Special Managers").

5. In order to understand the context in which the issues with which I am concerned arise, it is necessary to give a brief description both of PLOR's funding arrangements and its agreements with Glencore for the supply of crude oil.

The Group funding arrangements

6. The Group operated a £738 million securitisation facility arranged by HSBC Bank Plc ("HSBC"). Receivables arising under contracts between Group companies including PLOR as sellers (the "Sellers") were sold to an Irish SPV outside the Group (the "Purchaser") established by the Group's lenders. The Purchaser funded its acquisition of the receivables by issuing securities in the form of senior, mezzanine and subordinated notes to financial institutions and also to the ultimate parent of the Group, State Oil Limited, now in administration ("SOL").

7. Each Seller made various representations and warranties to the effect that any information provided to the Purchaser or other parties to the transaction, was true and

correct as at the date it was provided. They also made various representations and gave various warranties with regards to each receivable listed in a list of receivables in respect of which it was identified as the Seller.

8. A Group company, Prax Treasury Limited ("PTL"), operated a cash pool into which the purchase price for the receivables sold by the Sellers was deposited. The Sellers were appointed by the Purchaser to act as its agent in the interaction with customers and the collection of receivables. They operated accounts for the collection of monies payable by customers. PLOR and the other Sellers declared themselves trustees of the amounts held in those collection accounts for the benefit of the Purchaser to the extent that such amounts represented receivables sold to the Purchaser. At the end of each day, all amounts in the collection accounts were swept into the Purchaser's transaction accounts or to PTL. These swept funds were mixed together with funds swept into those accounts from other Sellers in the Group.

9. Separately from the HSBC securitisation facility, PLOR sold invoices issued to three particular trade debtors to Raiffeisen Bank International AG ("RBI"). Aspects of this factoring facility were structured in the same way as the HSBC facility. The customers paid into one of two collection accounts held in the name of PLOR with RBI and HSBC, the credit balances on which were charged by way of floating charge to RBI.

The Glencore / PLOR crude oil supply arrangements

10. All supplies of crude oil by Glencore to PLOR were governed by, and the payment obligations were secured by, a number of agreements (the "Transaction Documents"). The first was a framework agreement dated 5 July 2024 (the "Framework Agreement"), which set out a process by which title to crude oil supplied by Glencore would be transferred. On delivery of crude oil to the Immingham oil terminal, title was transferred to PLOR (a "DAP Sale"). This transfer of title was necessary because the crude oil had to be transferred by pipe to the Refinery, and only PLOR and the owner of a neighbouring refinery were permitted to own molecules in the pipeline.

11. On arrival at the Refinery, the crude oil was transferred from the pipeline into segregated crude storage tanks ("CSTs") at which point it was re-purchased by Glencore and title was transferred back to Glencore (an "Into-Tank Sale"). The amounts payable under the DAP Sale and the Into-Tank Sale were fixed at the same price and were set off against each other. When the crude oil was required for refining, it was withdrawn by PLOR from the CSTs and repurchased by PLOR (an "Ex Tank Sale"), for a price calculated in accordance with a first-in / first-out ("FIFO") methodology. At the time of the Ex Tank Sale, title to the crude oil would pass to PLOR after which it would be mixed with other product as part of the refining process.

12. By Schedule 5 to the Framework Agreement, PLOR agreed to make representations and warranties at certain points in time. Those points in time included the date on which the Framework Agreement was entered into and the first day of each month during its term. Glencore drew particular attention to specific representations as to: (i) PLOR's compliance with the terms of agreements with counterparties, and as to the absence of events of default under such agreements; (ii) PLOR's solvency and ability

to pay its debts as they fell due; (iii) the truth and accuracy of all information provided by PLOR to Glencore; (iv) the basis on which PLOR's latest financial statements had been prepared and the extent to which they fairly presented PLOR's financial condition; and (v) PLOR's compliance with undertakings set out in the Framework Agreement.

13. The second relevant Transaction Document was an agreement between Glencore and PLOR for the sale and purchase of cargoes of crude oil dated 5 July 2024 (the "Crude Supply Agreement"). This set out in more detail the terms on which Glencore and PLOR would enter into individual sales confirmations (each a "Sales Confirmation") for each DAP Sale. Each Sales Confirmation was also described as a Transaction Document and was to take the form set out in Schedule 4 to the Crude Supply Agreement. It was agreed that Glencore would be the sole and exclusive supplier of crude oil to the Refinery.

14. The five Relevant Sales Confirmations were dated between 1 April 2025 and 7 May 2025 and provided for deliveries between 8 May 2025 and 4 June 2025. One of the Relevant Sales Confirmations (dated 1 April 2025) was adduced in evidence on this application and provided for, amongst other matters, the date of the deal, the grade of the crude oil to be supplied and the date range for discharge. It also made specific reference to the Crude Supply Agreement and the Framework Agreement for matters relating to quantity and quality and to payment and credit terms.

15. The next relevant Transaction Document was a VGO & ATRes supply agreement dated 19 July 2024 (the "VGO/ATRes Agreement"). It set out the terms on which Glencore would supply associated refinery feedstocks in the form of low sulphur vacuum gas oil ("VGO") and Atmospheric Residue ("ATRes") to the Refinery. It also provided for Glencore to be the exclusive supplier of VGO and ATRes to the Refinery.

16. Also on 19 July 2024, Glencore, PLOR and another company within the Group, Prax Storage Lindsey Limited ("PSL"), entered into an oil storage agreement (the "Storage Agreement"), by which PSL agreed to make the CSTs available to Glencore for the custody and safekeeping of oil owned by Glencore. PSL also agreed to make available at the Refinery product storage tanks ("PSTs") for the storage of PLOR's refined product and other feedstocks ("Prax Owned Product") over which Glencore was granted security by way of floating charge (see below).

17. The Storage Agreement included prohibitions on the commingling of crude oil owned by Glencore and held in the CSTs with any substance belonging to any other person. It also includes equivalent prohibitions on commingling of any Prax Owned Product contained in the PSTs. PLOR was entitled under the Storage Agreement both to instruct PSL in relation to Prax Owned Product and to inject or withdraw oil owned by Glencore for its activities under the Framework Agreement.

18. There were two further Transaction Documents, both of which were concerned with securing PLOR's obligations under the other Transaction Documents. The first was a security agreement dated 5 July 2024 between Glencore and PLOR (the "Security Agreement"), which granted Glencore a floating charge over PLOR's rights and entitlements to the Prax Owned Product in the PSTs. The second was a guarantee dated 5 July 2024 between Glencore and SOL (the "Guarantee"), pursuant to which SOL guaranteed the obligations of PLOR under the other Transaction Documents.

Liquidation of PLOR and proceedings against Mr Soosaipillai

19. On 27 June 2025, Glencore was informed that the liquidation of PLOR was imminent. On 28 and 29 June, Glencore served a series of notices, demands and letters on PLOR, which, amongst other things, suspended performance of its obligations under the Framework Agreement and the Crude Supply Agreement. It also made demand for immediate payment of c.US$53 million said to be outstanding under the Framework Agreement, gave notice of crystallisation of its floating charge under the Security Agreement and withdrew PLOR's permission to dispose of any Prax Owned Product without Glencore's consent or to withdraw any of the crude oil owned by Glencore in the CSTs.

20. Glencore alleges that, as at 2 July 2025, i.e., shortly after the commencement of PLOR's liquidation, it was exposed to losses of US$267 million in respect of Ex Tank Sales for which it had not received payment ("Unpaid Ex Tank Oil"). Glencore also asserts that it was exposed to losses of US$177 million in respect of crude oil it had supplied to PLOR, which was stored in CSTs at the Refinery (and to which it therefore had title), and US$64 million for VGO which had been sold to PLOR but for which it had not been paid.

21. The effect of the steps taken by Glencore immediately prior to liquidation was to risk an unplanned and emergency shut down of the Refinery. Once appointed, the OR and the Special Managers determined that an immediate shut-down would not be in the interests of PLOR's creditors and would be detrimental to their ability to conduct an orderly wind down of an infrastructure asset of national importance.

22. On 3 July 2025, the Special Managers reached agreement with Glencore for PLOR to purchase the crude oil to which Glencore had title and which was still stored in the CSTs, together with the VGO held at the Refinery. This enabled the Refinery to keep operating. The price was US$314 million (£231.5 million) and was paid by PLOR on 10 July 2025. PLOR also paid a one-off product processing fee of US$40 million. The term sheet in which this agreement was recorded (the "Term Sheet") also provided that Glencore gave its irrevocable and unconditional permission for the sale at market value of the Prax Owned Product then held in the PSTs and that it revoked and rescinded the notice crystallising its floating charge over the Prax Owned Product.

23. Glencore was therefore paid for the crude oil on site at the time of the liquidation. However, the Term Sheet made no provision for sums outstanding in respect of Unpaid Ex Tank Oil, although to the extent that any Prax Owned Product then held in the PSTs had been produced from Unpaid Ex Tank Oil, the onwards sale of that product by PLOR was irrevocably and unconditionally permitted. It is Glencore's case that the Unpaid Ex Tank Oil was delivered pursuant to the five Relevant Sales Confirmations and that the total amounts which remain outstanding in respect of those supplies is US$236,158,785.56.

24. The Department for Energy Security and Net Zero ("DESNZ") advanced public funding to the Group to enable the safe and orderly wind-down of the Refinery. In the view of the OR, this funding is repayable to DESNZ as a post-appointment expense, which will take priority in the insolvency statutory waterfall ahead of Glencore's claim

under its floating charge. The current estimated outcome statement in PLOR's liquidation discloses that, absent Glencore's current claim, there is a base-case shortfall to DESNZ, with the possibility that, if certain circumstances occur, DESNZ may be repaid in full and a partial return may be made to His Majesty's Revenue and Customs ("HMRC") which, as a preferential creditor, ranks ahead of Glencore's floating charge. If Glencore's current claim were to succeed, the effect would be a very significant shortfall to DESNZ and no prospect of any return for HMRC.

25. The Refinery carried on operating for a short period after the date of PLOR's liquidation, but the evidence is that all crude oil had been processed in at least some way by 9 August 2025. From that date no further refining operations were carried out, although blending operations continued through to March 2026. With the exception of oil in the form of tank heels and product trapped in pipes, all oil had been sold by 28 February 2026.

26. On 11 July 2025, SOL, PTL and three other Group companies in administration commenced proceedings against Mr Soosaipillai, alleging that he had caused fictitious invoices to be sold into the securitisation structure. They obtained a without notice freezing order from Leech J on the same day with a return date seven days later. Glencore learnt of these proceedings on 15 July 2025 and learnt of the freezing order on 18 July 2025, which was continued by consent on the same day. On 1 August 2025, Glencore made an application for the disclosure of documentation from those proceedings and on 28 August was provided with redacted copies of the relevant documents.

27. It is Glencore's case that, upon receiving these documents, it learnt that SOL and the three other Group companies had alleged that Mr Soosaipillai had engaged in extensive fraudulent conduct, which had resulted in PLOR, SOL and other Group entities being in breach of the securitisation facility. It also learnt that the various representations that had been made to other parties to the securitisation facility were untrue and misleading. In its evidence in support of the current application, Glencore calls what it learnt the "Securitisation Fraud".

28. In broad terms, the allegations as to the Securitisation Fraud are that Mr Soosaipillai instructed certain employees of SOL to enter fictitious invoices and ineligible intra-group receivables into the ledger which was prepared for daily receivables reporting. The total value of sold invoices alleged to have been fictitious is said to have been at least £334 million as at 13 June 2025, of which more than £277 million was said to have been outstanding. It is said that, in giving the instructions he gave, Mr Soosaipillai intended the Purchaser and others to be deceived and to be induced to provide greater funding than the Group was entitled to. It is also said that Mr Soosaipillai knew that this course of conduct would expose the Sellers (including PLOR) to liabilities under the terms of the HSBC securitisation facility and would cause a termination event to occur, giving the other parties the right to terminate that facility.

29. It is also part of the case against Mr Soosaipillai that he made misrepresentations to (and knowingly and deliberately concealed the true financial position of the Group from) members of the Group's boards, auditors of companies within the Group, investors, lenders and contractual counterparties, including Glencore. He did so by signing the Group's year-end financial statements, knowing that those financial statements gave a misleading picture of the Group's financial position.

Glencore's claim

30. On 22 October 2025, Glencore's solicitors, Jones Day, wrote to PLOR contending that Glencore had a claim for rescission of the agreements it had entered into with PLOR for the supply of crude oil for which it had not received payment. It was also said that Glencore had the benefit of a constructive trust over any assets into which it could trace the products it had supplied to PLOR, including the proceeds of sale of the refined product. Jones Day made clear that their client "makes no election in respect of their proprietary or personal claims at this time", which introduced an element of equivocation into the question of whether or not Glencore was thereby electing to seek to disaffirm any of the Sales Confirmations and if so which. It is PLOR's case that, until the making of this application on 19 December 2025, Glencore did not take any steps inconsistent with the consent that it had given to the sale of the Prax Owned Product in accordance with the provisions of the Term Sheet.

31. In the proceedings, which Glencore now seeks leave to commence, it proposes to allege that, as a result of the Securitisation Fraud, several of the representations contained in the Framework Agreement were untrue and misleading at the time it was entered into and at all material times thereafter, including on the dates when PLOR and Glencore entered into the Relevant Sales Confirmations. The broad categories into which such representations fell are summarised in paragraph 12 above.

32. It is said that, where Mr Soosaipillai was involved in the Securitisation Fraud, he must have known that these representations were untrue and misleading and that, as the sole director of PLOR, his knowledge is to be attributed to PLOR on each occasion upon which the representations were made. It is also pleaded that PLOR intended that Glencore would rely on these representations when entering into the Framework Agreement and the other Transaction Documents, including the Relevant Sale Confirmations, and that it did so.

33. In support of the allegation of actual reliance, Glencore contends that, given the extension of significant credit to PLOR, it was of crucial importance to Glencore that PLOR was not insolvent, was in a strong financial position and had not suffered anything likely to have a material adverse effect on its ability to perform under the Transaction Documents. Glencore also contended that it was of crucial importance to it that PLOR was not in breach of any of its obligations under material contracts with third parties, including the HSBC securitisation facility, particularly where such breach would expose it to substantial liabilities or the prospect of the termination of that facility.

34. Glencore alleges that it is therefore entitled to seek an order rescinding the Relevant Sales Confirmations on the grounds that they were induced by fraudulent misrepresentations. It does not seek rescission of any other Transaction Document. It pleads that, upon rescission of each Relevant Sales Confirmation, the relevant Unpaid Ex Tank Oil and/or its traceable proceeds will be held for Glencore on resulting or constructive trust, which will include any Prax Owned Product produced from the Unpaid Ex Tank Oil and/or the proceeds of sale of such Prax Owned Product.

Applications for leave under section 130(2): the law

35. Section 130(2) provides that:

> "When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company or its property, except by leave of the court and subject to such terms as the court may impose".

36. It has often been said that it is not possible to state exhaustively all of the circumstances in which leave to proceed may be granted and that the section gives the court a free hand to do that which is right and fair according to the circumstances of the case: *In re Aro Co Ltd* [1980] Ch 196 ("*Aro*") at p.209F/G. However, it is self-evident that the court's decision as to what is right and fair must have sufficient regard to the purpose for which the stay is imposed. The main purpose is to preserve the limited assets of the company against expensive litigation and to oblige creditors to engage in the more orderly and convenient process of proving in the liquidation for the amounts to which they are entitled in accordance with the statutory scheme (per Patten LJ in *Gardner v Lemma Europe Insurance Co Limited* [2016] EWCA Civ 484 ("*Lemma*") at [2]).

37. In a case such as the present, it seems to me that the court should not investigate the merits of the claim beyond determining that the claim is genuinely arguable and gives rise to a sufficiently serious or substantial question to be tried. If it does not do so that is likely to be a good ground for refusing leave. But, even if it does, where the claim is a provable debt within the meaning of rules 14.1 and 14.2, leave is unlikely to be granted if it is more convenient for the dispute to be resolved by the process of proof in the liquidation (*Lemma* at [2]), combined as it is with the ability of the disappointed party and indeed any other dissatisfied creditor to appeal to the court against the liquidator's decision (see rule 14.8).

38. This focus on the desirability of creditors being obliged to prove for their debts in the liquidation explains why the court will often refuse an unsecured creditor leave to proceed. However, that is not the case where a creditor also has proprietary rights in assets held by the debtor. Where that is the case, the court will normally grant leave to proceed to a creditor who is secured at the commencement of the winding up. As the Court of Appeal explained in *Aro* at p.204B/C, a secured creditor is in a position where it can justly claim that it is independent of the liquidation since it is enforcing a right not against the company but to its own property.

39. The same reasoning applies where the claimant asserts an equitable proprietary interest in property held by the company at the time of liquidation. In that category of case, it will be seeking to enforce outside the winding up the rights to its own property to which it claims to be entitled. One such example is where the claimant has a claim for specific performance. In *Re Coregrange Ltd* [1984] BCLC 453 ("*Coregrange*") at p.457g, Vinelott J explained that, where a claimant had what was called an unimpugnable claim for specific performance of an agreement to sell property belonging to a company in liquidation, it was obvious that leave would normally be granted. The reason for this is that any such claimant is to be treated in equity as the owner of the property to which the right to specific performance extends.

40. In *Coregrange*, Vinelott J then went on to consider the position if the claim to specific performance were to be challenged. He described the claim in that case as "by no means a straightforward one" (see at p.455d) and held that the application for leave was not an appropriate forum for deciding whether the grounds for such relief were properly made out. It therefore followed that, if the claim were to be challenged, the question of whether the claimant was entitled to such an order should be determined in an action for specific performance and not in the winding up on an application for leave to commence proceedings.

41. Glencore submitted that the same approach should be adopted by analogy in relation to a claim for rescission, *a fortiori* where the basis for the rescission is the fraudulent conduct of the company's affairs. As will appear, I do not accept that the analogy is a complete one. Unlike a claimant with a right to specific performance, a person with a claim to rescind for fraudulent misrepresentation is not treated as the owner in equity of the property to which its claim extends until such time as the exercise of its right to rescind takes effect. Nonetheless, if the disputed rights which Glencore seeks to exercise are or include rights other than claims in respect of which its only remedy is to prove for a dividend, an action outside the winding-up may be the only appropriate means for determination of the dispute.

The merits issues on the application under section 130(2)

42. Glencore submitted that it was a substantial victim of the fraudulent conduct of PLOR's affairs and that its claim has strong prospects of success. It said that the OR did not dispute that PLOR had made various fraudulent misrepresentations which induced Glencore to enter into the agreements with PLOR which Glencore now seeks to rescind. That may be so, but Mr Curl made clear that there was no common ground as to the commission or nature of any fraud. Glencore then submitted that, by opposing its application for leave to pursue its claim, PLOR, as the beneficiary of a serious fraud, is seeking to block and override the equitable proprietary rights which it claims as a victim of that fraud.

43. This submission goes to the heart of the first of four merits-based grounds advanced by PLOR as to why leave should not be granted. PLOR said that, contrary to Glencore's case, such rights as may have accrued to Glencore by reason of any fraudulent misrepresentations made by Mr Soosaipillai on its behalf, were not equitable proprietary rights of a nature which entitled it to rank ahead of PLOR's unsecured and preferential creditors. It submitted that Glencore's claim would be futile because, as a matter of principle, equitable rescission based on a pre-liquidation fraudulent misrepresentation is not available against a company after it has commenced its winding up.

44. PLOR submitted that its position on this first ground is given clear and unequivocal support by the decision of Murray Rosen QC in *Crown Holdings (London) Limited (in liquidation)* [2015] EWHC 1876 (Ch) ("*Crown Holdings*"), which decided the point against the argument now advanced by Glencore. PLOR submitted that I should follow the ratio of *Crown Holdings* unless I am "convinced" that it is wrong (per Gloster J in *Lornamead Acquisitions Ltd v Kaupthing Bank HF* [2011] EWHC 2611 (Comm) at [53]), or unless there is a powerful reason for not doing so, the formulation preferred

by Lord Neuberger PSC in *Willers v Joyce (No 2)* [2016] UKSC 44, [2018] AC 843 at [9].

45. I shall revert to *Crown Holdings* in more detail, but the case involved two separate companies in the same group. The foundation of the decision was a finding that any equity which the customers had to seek rescission did not encumber the property into which they sought to trace as against the relevant company's general body of creditors. At the commencement of the companies' liquidations, the relevant property, in that case monies transferred by customers, was held in accordance with the terms of the statutory scheme imposed by section 107 (the statutory trust described by Lord Diplock in *Ayerst v C&K (Construction) Ltd* [1976] AC 167 ("*Ayerst*"), 177). Equitable rescission could not be granted thereafter if it interfered with the rights which the other creditors had thereby acquired.

46. As well as this first ground, PLOR also submitted that there were three other grounds on which the court could and would refuse equitable rescission. These were said to bolster its case that it was therefore futile to grant leave for Glencore's proposed claim to proceed. It was not in issue that, if PLOR were to be correct on any one of the four grounds, equitable rescission of the Relevant Sales Confirmations is not available to Glencore and the claim for relief sought in the draft particulars of claim will fail.

47. The second ground relates to the prohibition of partial rescission. It was said by PLOR that rescission is not available because a contractual bargain cannot be rescinded in part and it is not open to Glencore to seek rescission of the Relevant Sales Confirmations without also rescinding the Framework Agreement, and indeed other Transaction Documents, which it does not seek to do. PLOR also submitted that, because Glencore stood on its rights under the floating charge to extract a processing payment from PLOR (see paragraph 22 above), it could not seek to rescind only the five Relevant Sales Confirmations while keeping the remaining Transaction Documents intact.

48. The third ground is affirmation. It was said that Glencore had material knowledge of the proceedings brought against Mr Soosaipillai by 15 July 2025 and that its conduct before then, which continued thereafter, manifested an intention not to rescind the relevant contracts and to continue to be bound by the Transaction Documents. PLOR contended that this conduct extended for a period long after it had gone into liquidation and up to the time the current application was issued.

49. The fourth ground is what is said to be the inability of Glencore to trace the crude oil it had supplied, but for which it has not been paid, into the Prax Owned Product, i.e., the final refined products sold out of the Refinery. This argument is closely linked to what was said to be the impossibility of *restitutio in integrum*. If Glencore is entitled to rescind the Relevant Sales Confirmations, it must also give counter-restitution for the benefits it received at the time of the commercial settlement reached in July 2025.

Ground One: *Crown Holdings*

50. The first issue which arose in *Crown Holdings* was also the principal issue around which most of the argument revolved at the hearing of this application. I must consider the case in detail, both because PLOR submitted that I should follow it unless I am

convinced that it is wrong, and because the conclusion which Mr Rosen reached has proved controversial in academic circles.

51. My attention was drawn to only one other case in which *Crown Holdings* has been considered: the judgment of Andrew Henshaw QC (as he then was) in *Global Currency Exchange Network Limited v Osage 1 Limited* [2019] EWHC 1375 (Comm), [2019] 1 WLR 5865. Mr Henshaw cited parts of the judgment in *Crown Holdings* with apparent approval (or at least without criticism: see at [40] and [45]). However, Mr Henshaw was not concerned with those aspects of Mr Rosen's judgment which consider the relationship between the equity to rescind and the intervention of a liquidation.

52. In *Crown Holdings*, there were two companies, both of which entered administration on 4 October 2010 and then creditors' voluntary liquidation on 31 March 2011. The case was decided after full adversarial argument on the liquidators' application for directions. The court was asked to determine whether the relevant companies held certain monies on trust for their customers. Those customers had entered into contracts for the purchase of relatively small amounts of foreign currency pre-liquidation but had not received the currency to which they were then entitled.

53. The first of three grounds on which those appointed as representatives for the customers argued that they had a proprietary interest in the monies paid by them was that they had been induced to do so by fraudulent misrepresentations. It was said that this meant that the contracts under which those monies were paid were voidable, and that the customers were therefore entitled to rescission, with the consequence that they regained equitable title to the monies transferred under them.

54. As in the present case, the liquidators argued that the right to rescind was lost by affirmation or delay. Those issues gave rise to questions of fact and Mr Rosen rejected the liquidators' submission that delay alone or equitable laches debarred the proprietary claims made by the defrauded customers. Of more significance for present purposes, it was also argued that, after the commencement of the liquidations, the right to rescind was ineffective so as to revest any property in the monies paid by customers.

55. In reaching his conclusion that the customers' argument failed, Mr Rosen accepted that the decision of Rimer J in *Shalson v Russo* [2003] EWHC 1637 (Ch), [2005] Ch 28 ("*Shalson*") at [109] to [119] is authority for the proposition that, where assets are transferred as a result of a fraudulent misrepresentation, title passes subject to the innocent party's right to rescind. He also accepted that, on the facts in *Crown Holdings,* the contracts by which the payments were made were entered into as a result of fraudulent misrepresentations and that they were voidable subject to rescission by the customers.

56. However, at [37ff] of his judgment in *Crown Holdings*, Mr Rosen held that the liquidators were correct to submit that the customers had lost the right to rescind and thereby regain title in equity to the sums transferred by them under the contracts, when the companies went into administration or liquidation (he did not distinguish between the two types of insolvency procedure). He reached this conclusion notwithstanding an argument made by the representatives for the customers that two bankruptcy cases (*Re Eastgate; Ex Parte Ward* [1905] 1 KB 465 ("*Eastgate*") and *Tilley v Bowman* [1910] 1 KB 745 ("*Tilley v Bowman*")), demonstrated that rescission is available, so as to regain equitable title in assets transferred under a voidable contract as against a trustee in

bankruptcy, after the act of bankruptcy to which his title relates back. It was submitted on behalf of the customers that these authorities were applicable *a fortiori* to claims against administrators or liquidators who acquire no new title but act only as agents of the transferee.

57. Mr Rosen's reasoning was as follows. First, he said that the equity to rescind a fraudulently induced contract is a personal right against the fraudster, which does not give the innocent party any proprietary interest in property transferred under that contract. In support of this conclusion, Mr Rosen relied on *Bristol and West Building Society v Mothew* [1998] Ch 1 ("*Mothew*") at p.22 and Lord Hoffmann's statement in *Barclays Bank Plc v Boulter* [1999] 1 WLR 1919, 1925A/B, when dealing with the position of a purchaser of a chattel where the vendor's title was vitiated by fraud, that: "In such a case the defrauded owner retains no proprietary interest in the chattel…".

58. Mr Rosen also relied on *Twinsectra v Yardley* [1999] Lloyd's Rep Bank 436, 461 in which the Court of Appeal noted, in relation to a contract voidable for misrepresentation, that:

> "The result, so far as third parties are concerned, is that, before rescission, the owner has no proprietary interest in the original property; all he has is the 'mere equity' of his right to set aside the voidable contract. That equity binds volunteers and those taking with notice of the equity, but not purchasers for value without notice."

59. Mr Rosen then cited *Shalson* at [126] in which Rimer J had explained that it was no part of the philosophy of the revesting theory that all intermediate transactions occurring prior to the rescission can be undone. As Rimer J put it, until rescission, the property transferred under a voidable contract remains vested in the representor. Mr Rosen also said that the accepted view amongst commentators is that a representee has no proprietary interest in the property transferred to the representor, in support of which he cited the then-current editions of *Chitty on Contracts* at [6-115], Sarah Worthington's article on *The Proprietary Consequences of Rescission* in RLR 2002 (10) 28, who described the mere equity to rescind as a "fragile right" and the then-current edition of *O'Sullivan, Elliott and Zakrezewski: The Law of Rescission* (2nd ed at [16-12]):

> "It is now settled law that title to property passes at law and in equity under a voidable contract, and that a claim to recover title upon equitable rescission is properly described as an "equity" or "mere equity". This is said to not be an interest in that property, or a chose in action, but a personal right to recover title when rescission occurs. The principle is that "before rescission, the owner has no proprietary interest in the original property; all he has is the "mere equity" of his right to set aside the voidable contract".

60. As to *Eastgate*, Mr Rosen said that it was still cited as authority for the proposition that the equity of rescission may be enforceable even if only exercised after the commencement of the transferee's insolvency (and he referred to *Calnan, Proprietary Rights and Insolvency* (2010 at [4.84] and [4.85]); *Goode on Principles of Corporate Insolvency Law* ("*Goode*") (4th edn 2011 at [6.17]); and *Goff & Jones, The Law of Unjust Enrichment* (8th edn 2011 at [40-23])). However, Mr Rosen said that the brief reasoning was given in a bankruptcy context and, in his view, it did not follow that it

should necessarily be applied in the context of corporate insolvency. He also said that in *In re Goldcorp Exchange Ltd* [1995] 1 AC 74 ("*Goldcorp*") at pp.102-103, Lord Mustill, delivering the judgment of the Privy Council, had said that *Eastgate* was wrong.

61. Mr Rosen went on to conclude that, unlike bankruptcy, the property and choses in action of a company in liquidation are held in accordance with the statutory scheme described by Lord Diplock in *Ayerst* at pp.177ff. By section 107, this scheme requires that the company's property be applied "in satisfaction of the company's liabilities pari passu and, subject to that… (unless the articles otherwise provide) … distributed among the members according to their rights and interests in the company". He said that it is only where the property of the company is subject to the present, rather than contingent, proprietary rights of a third party that it will fall outside the statutory trusts imposed by the IA 1986.

62. In [43] of his judgment, Mr Rosen concluded that this was different from what occurs in bankruptcy, where the assets of the insolvent debtor vest in his trustee. He recognised that a mere equity might be capable of assertion against the estate of a bankrupt because, under section 283(5), a bankrupt's estate is expressed to remain subject to third party rights "so that the personal equity to rescind may still be exercised". It followed that, even if the equity to rescind is not exercisable in a liquidation, the decision in *Eastgate* may still be correct.

63. He then went on to conclude that the relevant property in *Crown Holdings*, viz., the sums paid by the customers, were sums to which the companies had full legal and beneficial title. He said that the equity those customers had to rescind as a result of the fraudulent misrepresentations was only a personal right and did not encumber those sums as against the general body of creditors. It followed that the relevant property therefore fell to be dealt with in accordance with section 107 for the benefit of the companies' creditors as a whole.

Ground One: Glencore's challenge to *Crown Holdings*

64. Glencore recognised that it needed to challenge the correctness of *Crown Holdings,* and it submitted that Mr Rosen's approach was both flawed and wrong. It said that there are powerful reasons for me not to follow the conclusions he reached. This submission gains support from the fact that *Crown Holdings* has been the subject of considerable academic criticism, some of which is expressed in trenchant terms. The criticism tends to focus on the distinction drawn by Mr Rosen between the position in bankruptcy and that in corporate insolvency. Thus, in *Goff & Jones on Unjust Enrichment* (10th edn at [40-28]) the editors say that "the justification for this distinction is far from obvious", in *Snell's Equity* ("*Snell*") (34th edn at [2-007] Fn 29) it is said that "This distinction is open to question" and in *O'Sullivan, Elliott and Zakrezewski, The Law of Rescission* ("*O'Sullivan*") (3rd edn at [25.18]), it is said that there seems to be "no good reason for this distinction".

65. Mr Cumming also relied on a more detailed critique of *Crown Holdings* by Nick Segal in *The Impact of Insolvency on the Right to Rescind – the Flaw in the Crown* (2016) 29 Insolvency Intelligence 27, an analysis that was discussed with approval in *Goode* (5th

edn 2018 at [6.17]). In *O'Sullivan* (at [25.06]), Mr Segal's article is described as forceful criticism. Apart from drawing attention to the illogicality of the distinction between bankruptcy and liquidation, Mr Segal relied on Professor Goode's characterisation of the equity to rescind as an inherent limitation of the interest that has been acquired. He described the right to rescind as a right of defeasance, which means that the representee does not lose its right to rescind merely by reason of the winding-up.

66. In Mr Segal's view this meant that the statutory trust referred to by Mr Rosen in *Crown Holdings* was irrelevant because PLOR's interest in the relevant property was always defeasible because of the fraud. He also pointed out that the statutory trust based on the principles explained by Lord Diplock in *Ayerst* is a trust for purposes and not for persons, a point which is confirmed by Lord Hoffmann in *Buchler v Talbot* [2004] UKHL 9, [2004] 2 AC 298 at [28] where he describes it as "a special kind of trust because neither the creditors nor anyone else have a proprietary beneficial interest in the fund". As Lord Hoffmann went on to explain: "The creditors have only a right to have the assets administered by the liquidator in accordance with the provisions of the IA 1986". In Mr Segal's view, this principle explains why the right to rescind and revest equitable title is and should not be lost following a winding up. As he put it "there is no third party who has acquired (without notice of the right to rescind) a legal or equitable interest in the relevant property held by the company".

67. In developing his challenge to *Crown Holdings*, Mr Cumming cited four bankruptcy cases, two of which, *Eastgate* and *Tilley v Bowman*, had also been referred to by Mr Segal. The first in point of time was *Harrison v Walker* (1792) Peake 150, 170 ER 111, a decision of Lord Kenyon, in which his very short judgment records that an assignment on bankruptcy passed only the property to which the bankrupt was conscientiously entitled. It was held that, having not received any consideration for bills of exchange remitted to the bankrupt (the purported consideration was another bill the purported acceptance of which was forged), the plaintiff was entitled to have their value returned to him.

68. The second bankruptcy case was *Load v Green* (1846) 15 M & W 216, 153 ER 828, a decision of the Court of Exchequer Chamber delivered by Parke B. Goods were purchased by the bankrupt and delivered to him after he had committed an act of bankruptcy. They remained in his possession at the time a fiat in bankruptcy was issued four days later. The vendors brought an action in trover to recover the goods on the grounds that they were obtained by a fraudulent purchase. The jury held that the bankrupt had purchased them with the fraudulent intention of not paying for them.

69. The only defence advanced by the bankrupt's assignees was that the goods were in the order and disposition of the bankrupt at the time they took possession as assignees. This arose out of the now-abolished doctrine of reputed ownership, i.e., the question of whether the goods were in the bankrupt's "possession, order or disposition with the consent and permission of the true owner" within the meaning of section 72 of the Bankrupts Act 1825 in which event they vested in the bankrupt's assignee. If they were not, they did not do so. It was held that, at the time of the act of bankruptcy, the bankrupt was the real and not apparent owner, so the doctrine did not apply.

70. However, in circumstances in which the assignees did not argue that they had any other defence apart from the one based on the doctrine of reputed ownership, Parke B

explained what the position would have been if the act of bankruptcy had occurred after delivery:

> "As the goods were obtained by a fraudulent purchase, the plaintiffs had a right to disaffirm it, to revest the property in them, and recover their value in an action of trover against the bankrupt; and as the assignees take, by virtue of the assignment, such interest only as the bankrupt has, the plaintiffs had a right to recover the value of the goods in the hands of the assignees, in the same form of action, on a conversion by them, unless they were entitled to those goods under the 72nd section."

71. This part of the decision in *Load v Green* was relied on in the argument for the vendor in *Eastgate*, which was the third bankruptcy case referred to by Mr Cumming. The facts of *Eastgate* were that, after the debtor had committed an act of bankruptcy by absconding, several tradesmen, who had supplied goods on credit broke into the debtor's house (with the assent of the landlord) and recovered such of their goods as they could find on the premises. This all occurred before a receiving order was made. When it was, the debtor's trustee in bankruptcy claimed the return of the goods from one of the tradesmen on the grounds that his title related back to the act of bankruptcy of which the defendant was on notice. The defence was that there was fraudulent intent on the part of the debtor to obtain goods without paying for them and that *Load v Green* established that, on discovering the fraud, the defendant was entitled to disaffirm the contract and recover his goods within a reasonable time, the trustee having no better title than the debtor.

72. Bigham J held that the question for his determination was whether, at the time the defendant took possession of the goods, they formed part of the bankrupt's estate. He said that having discovered the fraud, the defendant then disaffirmed the contract and took back his property. The way that he expressed the position was as follows:

> "Now did the property at the time he took it back form part of the estate of the bankrupt? I do not think it did, and for this reason. I think that the trustee acquired the interest of the bankrupt in the property subject to the rights of third parties. One of those rights in this case was the right of the vendors of the goods to disaffirm the contract and to retake possession of the goods. I cannot say that I approve of the way in which possession was retaken in this case. But in my opinion Mr Bowling was only taking, though taking it in a wrong way, that which was his own. That being so, I think the application of the trustee must be dismissed."

73. The fourth bankruptcy case on which Mr Cumming relied was *Tilley v Bowman*. This was a claim by the trustees in bankruptcy of a firm of retail jewellers who had induced a wholesale jeweller to supply for £569 a collection of jewellery based on a fraudulent misrepresentation that their own customer required long term credit. The retailers pledged the jewellery to a pawnbroker for £300. After a receiving order was made against the retailers, the wholesaler discovered the fraud, elected to rescind its contract with the retailers and (on payment of £300) recovered the jewellery from the pawnbroker. Before action, the trustees in bankruptcy tendered £300 to the wholesaler and demanded delivery up. There were other claims in the alternative arising out of the payment by the retailer to the wholesaler of £182 towards the price, but the aspect of the case, which is relevant to the present dispute, is the trustee's claim in detinue.

74. The trustee argued that title had passed at the date of the receiving order and that it was too late thereafter for the wholesaler to exercise its rights to disaffirm the contract and retake possession. The wholesaler said that the trustee's interest was only acquired subject to those rights and relied on *Eastgate*. The trustee's answer to this was that *Eastgate* was distinguishable on the grounds that the contract of sale was rescinded before the receiving order was made. Hamilton J considered that the dispute was governed by the decision in *Eastgate* which he said was indistinguishable. He held that the claim in detinue therefore failed. He said that the principle that the vendor's right to disaffirm the contract was a qualification of the trustee's rights was as applicable where rescission is after the receiving order as it is where rescission is after the act of bankruptcy but before the receiving order.

75. Based on these decisions, Glencore submitted that, where a vendor is induced to sell goods by the purchaser's fraud, the title which the purchaser thereby obtains is defeasible. This has also been described as "an imperfection in the title of the transferee" (*O'Sullivan* at [21.29]). The interest acquired by the purchaser's trustee in bankruptcy is therefore no more than the bankrupt's own imperfect title, which is subject to equities. It is said that this situation is now reflected in section 283(5):

> "For the purposes of any such provision in this Group of Parts, property in a bankrupt's estate is so comprised subject to the rights of any person other than the bankrupt (whether as a secured creditor of the bankrupt or otherwise) in relation thereto ..."

76. Glencore then submitted that section 283(5) was required in the case of bankruptcy to spell out that the vesting of the bankrupt's estate in a trustee pursuant to section 306 does "not alter the pre-existing position". It was said that an equivalent to section 283(5) was not required in corporate insolvency, because the assets remain vested in the company, there was no assignment to a trustee and there was therefore no need to spell out that the property to which the *Ayerst* statutory trust applied remained affected by and subject to any pre-existing equity. In other words, it submitted that Mr Rosen was wrong when he held in *Crown Holdings* at [43] that a mere equity might be capable of assertion against the estate of a bankrupt, even though it may not be asserted against the estate of a company in liquidation. There is nothing in *Insolvency Law and Practice, Report of the Review Committee* chaired by Sir Kenneth Cork (the "*Cork Report*") which indicated that there was intended to be such a difference in outcome as between the bankruptcy of an individual and the insolvency of a corporate entity.

77. Glencore also said that it is difficult to see how or why a right to rescind which was binding on a company before the company went into liquidation should cease to bind the company once it goes into liquidation. Mr Cumming submitted that it was a fundamental principle of law that, where a contract has been procured by fraud, the victim of the fraud is entitled to rescind the contract at law and to seek to do so in equity and that such a principle can only be abrogated by statute where expressly stated or such a result appears by necessary implication (c.f., *R (Morgan Grenfell & Co Ltd) v Special Commissioners of Income Tax* [2002] UKHL 21, [2003] 1 AC 563 at [8]). He said that there is no express provision in the IA 1986 to the effect that, immediately upon a company's insolvency, a person who would otherwise be entitled to seek to rescind a contract for fraudulent misrepresentation, will be debarred from doing so, or that, immediately upon insolvency, a company subject to an equity will no longer be subject to that equity.

78. He also submitted that this was to be contrasted with the removal of what would otherwise be a contributory's right to prove for a debt in respect of arrears of dividends or otherwise in competition with debts claimed by creditors who are not members (see section 74(1)(f)). He asked rhetorically why the same had not been done in the case of rescission, if PLOR's submission were correct.

79. In summary, Mr Cumming accepted that, subject to the position of preferential creditors, section 107 requires the company's property in a voluntary winding up to be applied amongst all of the company's creditors pari passu. But he said that this begged the question of what this property is and says nothing about the position of those who benefit from equities against the company such as the mere equity to rescind which Glencore is entitled to exercise. It followed that *Crown Holdings* was wrong. As the issue related to the existence and nature of an equity affecting property, it was not suitable for determination on a disputed proof and, as a minimum, Glencore should be given the opportunity to challenge it in the action it seeks leave to bring.

Ground One: the position of PLOR and the OR

80. Mr Curl adopted the reasoning of Mr Rosen in *Crown Holdings,* which he said I should follow unless convinced that it is wrong. But he developed that reasoning by relying on two key principles of insolvency law. The first is that there is a single point in time both for the quantification of the debts and liabilities of a company in liquidation and for the crystallisation of a person's status as against a company in liquidation. The second is that all liabilities capable of being expressed in money terms are subject to the statutory machinery for the proving of debts. He submitted that a proper application of these two principles explains why Glencore's arguments are wrong: as at the commencement of PLOR's liquidation, Glencore was a creditor not an owner and its claim is capable, and only capable, of being expressed in money terms. In his oral submissions Mr Curl characterised these principles as going to Glencore's status as at the cut-off point when PLOR went into liquidation.

81. As to the first of these two principles, Mr Curl cited *In re Nortel GmbH* [2013] UKSC 52, [2014] AC 209 ("*Nortel*") at [35] as authority for the proposition that:

> "the unsecured debts of a company after an insolvency event are payable pari passu to the relevant creditors, who claim payment by proving for their debts. There has to be a cut-off date to determine the class of creditors who are to participate in the distribution of the company's available net assets."

In the present case, the relevant date is when PLOR went into liquidation, i.e., 30 June 2025 (rule 14.1(3)), at which point Glencore was a creditor with the benefit of a floating charge. In relation to the Unpaid Ex Tank Oil supplied under the Relevant Sales Confirmations, it had at most an inchoate right in the form of a mere equity to rescind (although it did not know that it had that right), at a time at which third parties' rights under the *Ayerst* statutory trusts intervened.

82. This was a reference to the rights which flow from the fact that the making of a winding up order causes the company to cease to be the beneficial owner of its assets. As Lord Diplock explained in *Ayerst* at p.180F, the effect of the winding up legislation has long

been to give to the property of a company in liquidation that essential characteristic which distinguishes trust property from other property, viz., that it cannot be used or disposed of by the legal owner for its own benefit, but must be used or disposed of for the benefit of other persons.

83. Mr Curl submitted that this principle remains as true under the current legislation as it always has been under its predecessors (*Mitchell v Carter, Re Buckingham International Plc* [1997] 1 BCLC 673, 686f-h and *In re Lehman Brothers International (Europe) (in administration) (No 4)* [2017] UKSC 38, [2018] AC 465 ("*Lehman (No 4)*") at [54]). The principle is also widely applicable in the common law world. Amongst the cases cited by Mr Curl was *Stichting Shell Pensioenfonds v Krys* [2014] UKPC 41, [2015] AC 616, [14] to [26] in which Lord Sumption JSC explained how the principle underpins the court's jurisdiction to restrain creditors of a company in liquidation from proceeding elsewhere in a manner calculated to violate the statutory scheme of distribution and to protect its own jurisdiction to do equity to claimants to an insolvent estate. The fact that it is a company's creditors and contributories for whose benefit the statutory trusts exist has most recently been reiterated by Lord Richards JSC giving the judgment of the Privy Council in *Manhattan Coffee Investment Holding (in liquidation) v Stephen Mbugua Mwagiru* [2026] UKPC 21 ("*Manhattan*") at [58] and [59].

84. It was then said that the other creditors were in a position analogous to the position of a bona fide purchaser without notice of Glencore's equity to rescind. No new value was advanced but, although the other creditors did not themselves have a beneficial interest in the assets which were the subject of the statutory trusts, they had rights to enforce the statutory scheme which extinguished the equity. As Rimer J said in *Shalson* at [126]:

> "Similarly, if a representor company were to go into compulsory liquidation before any rescission, its assets would cease to be beneficially part of its property and would become subject to the statutory scheme in favour of creditors of the nature discussed in [*Ayerst*]; and I should be surprised if any subsequent rescission entitled the representee to say that the property transferred to the company under the voidable contract must be regarded as having at all times been his property so as to fall outside that scheme. But in cases in which third party rights such as this have *not* accrued, I would not wish to exclude the possibility that the representor might be able to assert the proprietary rights arising on rescission which the line of authority to which I have referred supports. Such a claim would not involve giving him any preferential rights over creditors: it would merely assert his right to recover property in which they can have no interest."

85. Mr Curl then submitted that there are several rights which creditors have pre-liquidation, which are modified or extinguished in exchange for their right to share in the company's assets under the terms of the statutory trust. By way of example, he drew attention in the context of bankruptcy to a creditor's inability to retain the benefit of an execution or attachment which is not completed before the commencement of the bankruptcy (section 346(1)). He also referred to the compulsory conversion of a foreign currency creditor's claim into sterling at the relevant date, which occurs at a fixed valuation date when the company goes into liquidation or a bankruptcy order is made (rules 14.1(3) and 14.21 and *In re Lines Bros Ltd* [1983] 1 Ch 1, 18D-E).

86. He then submitted that one of the rights, which is excluded by the introduction of the *Ayerst* statutory trusts, is the right to seek rescission. The exclusion of that right is necessary in order to ensure an orderly distribution of the insolvent estate. He said that, having suffered a collective misfortune, the creditors lose individual rights and become subject to a common scheme in which none is treated more favourably than the other. This was illustrated in the different context of funds collected by an insolvent agent and not passed on to its principal by the decision of the Supreme Court in *Angove's Pty Ltd v Bailey* [2016] UKSC 47, [2016] 1 WLR 3179. Lord Sumption JSC explained, at [25]-[26], why a supervening liquidation will preclude new proprietary rights (in that case under a constructive trust) arising for the first time post-process:

> "The statutory rules for the distribution of insolvent estates represent an important public policy designed to achieve a pro rata distribution of the company's estate between its creditors. For that purpose, it is necessary to assess claims as at a fixed and common point of time, namely when the company went into liquidation. The arbitrary character of any cut-off date is to some extent mitigated by statutory provisions for adjusting prior transactions prejudicial to creditors…
>
> It is inherent in the statutory scheme of distribution in any insolvency that apparently arbitrary results may follow from the adventitious timing of the commencement of the liquidation, especially in the case of deferred obligations. In principle, an advance payment to a company made before the commencement of the liquidation for an obligation performable afterwards will form part of the company's estate, notwithstanding that its supervening insolvency means that the obligation will not be performed, at any rate in specie."

87. Other examples given by Mr Curl of existing rights of which creditors are deprived by a liquidation include the right of set-off. The equitable right to set-off is characterised by *Goode* at [3-05] as an equity and Mr Curl said that, like the equity to rescind, it is an equity which does not survive liquidation, in that instance because of the terms of the mandatory insolvency set-off rule (rule 14.25). Similarly, a creditor's contractual right to interest is excluded by the terms of section 189 and replaced by the statutory right in the event of a surplus: *Lehman (No 4)* at [47].

88. Turning to the second principle, Mr Curl referred to a legislative policy to ensure that all claims should, if possible, be admitted to proof rather than excluded from proof. He relied on the definitions of "debt" and "liability" in rules 14.1(3), (5) and (6) and "provable debt" in rule 14.2(1):

> "14.1(3) "Debt", in relation to … winding up …, means (subject to the next paragraph) any of the following–
>
> (a) any debt or liability to which the company is subject at the relevant date;
>
> (b) any debt or liability to which the company may become subject after the relevant date by reason of any obligation incurred before that date;
>
> …

> (5) For the purposes of references in any provision of the Act or these Rules about …, winding up … to a debt or liability, it is immaterial whether the debt or liability is present or future, whether it is certain or contingent, or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion; and references in any such provision to owing a debt are to be read accordingly.
>
> (6) In any provision of the Act or these Rules about … winding up …, except in so far as the context otherwise requires, "liability" means (subject to paragraph (4)) a liability to pay money or money's worth, including any liability under an enactment, a liability for breach of trust, any liability in contract, tort or bailment, and any liability arising out of an obligation to make restitution."
>
> "14.2(1) All claims by creditors except as provided in this rule, are provable as debts against the company or bankrupt, whether they are present or future, certain or contingent, ascertained or sounding only in damages."

89. Mr Curl then submitted that this was a deliberately wide definition intended to render as many obligations susceptible to proof as possible. In making this submission he relied on statements in *Nortel* that the definition of "provable debt" in the statutory predecessor to rule 14.2 is strikingly wide, having been progressively widened by the legislature over the past 300 years (per Lord Neuberger PSC at [66] and [90], reiterated in *Lehman (No 4)* at [33]) and that under the modern scheme of insolvency law, all liabilities arising from the state of affairs which obtains at the time the company goes into liquidation are in principle provable (per Lord Sumption JSC at [136]). The definition now extends to any liability in tort (including therefore deceit) and any liability arising out of an obligation to make restitution whether future, contingent or accrued at the time the company went into liquidation. The conclusion to be drawn was said to be that, however characterised, all of Glencore's rights against the company (except its floating charge) are inevitably provable.

90. It was not just submitted that, absent rescission of the Relevant Sales Confirmations, PLOR's liabilities in debt to pay the amounts due under them (what Mr Curl called the extant debt obligations) were provable and that Glencore was therefore eligible to receive a dividend on them, subject to the value of its floating charge (see generally Chapter 2 Part 14 of the Rules). It was also submitted that any equity to seek rescission that Glencore may have is also provable as a debt within the meaning of rule 14.1. It is said to be provable either (a) as a liability to which PLOR was subject at the liquidation date, or (b) as a liability to which PLOR may become subject after the liquidation date by reason of an obligation incurred before that date (rule 14.1(3)).

91. Mr Curl submitted that it might be the latter because, if leave is granted under section 130(2), Glencore will then invite the court to make PLOR subject to a liability after the relevant date. That liability will have arisen out of its equity to rescind which itself gives rise to an obligation to make restitution and is capable of being valued in money or money's worth thereby falling within rule 14.1(6). The working out of these principles meant that Glencore's rights fall to be adjudicated in the liquidation in accordance with the statutory scheme, and not in bilateral post-liquidation litigation.

92. I have already explained that Mr Rosen distinguished *Eastgate* and *Tilley v Bowman* on the basis that they were bankruptcy cases and were not concerned with the position in

a liquidation. Mr Curl also distinguished them on the basis that neither of them were concerned with equitable rescission. He relied on the fact that in *Eastgate*, Bigham J's conclusion was based on *Load v Green* which was a case of trover, and that in *Eastgate* itself, the vendor had exercised a self-help remedy to recover the goods in specie with which the court refused to interfere. The position was similar in *Tilley v Bowman* where the wholesaler had recovered the relevant jewellery from the pawnbroker, and it was only thereafter that the trustee made a common law claim in detinue. In neither case was the court's equitable jurisdiction invoked by the representee in order to rescind the contract or in order to recover the transferred property or its value or to trace into its proceeds.

93. Mr Curl also submitted that the court should approach these pre-1986 bankruptcy authorities with caution, and not merely because they were concerned with bankruptcy rather than winding up. He said that before the enactment of the IA 1986, there were a number of surprising inconsistencies in the operation of the rules governing the administration of insolvencies, at least one of which bore on the nature of a provable debt. As Vinelott J exposed in *In re Berkeley Securities (Property) Ltd* [1980] 1 WLR 1589, although unliquidated damages for tort were not provable in a bankruptcy, they were provable in a winding up (see also the *Cork Report* at [111] and [1310] to [1318]). This distinction was swept away by the enactment of rule 12.3 of the Insolvency Rules 1986 as applied by section 382 in bankruptcy and rule 13.12 of the 1986 Rules in winding up. This is therefore one of the many aspects of the current insolvency code in respect of which it may be dangerous to rely on what has been said by judges concerned with the law applicable under different legislative provisions: c.f., *Lehman No 4* at [83] and *Re M C Bacon Ltd* [1990] BCLC 324, 335.

94. More specifically, Mr Curl pointed out that, at the time *Tilley v Bowman* was decided in 1910, claims for unliquidated damages arising other than by reason of a contract, promise or breach of trust were not provable in bankruptcy. It followed that it (like *Eastgate*) was a case about a different remedy, in a different insolvency process, decided under legislation which has now been repealed and at a time when the underlying policy was different.

Conclusions on Ground One

95. To set these arguments in their proper context, it is necessary to have in mind some essential principles relating to rescission of a contract, and the nature of the equity to rescind. Rescission is a remedy by which a contract is extinguished, and the parties are restored to their original positions. It is available where one party's consent to the formation of a contract is vitiated by, amongst other things, a fraudulent misrepresentation made by the other party, with the consequence that the contract is voidable at the election of the representee. The seriousness with which the law treats a finding that a contract has been induced by a fraudulent misrepresentation is clearly explained by Lord Bingham in *HIH Casualty and General Insurance Ltd v Chase Manhattan Bank* [2003] UKHL 6 at [15].

96. However, it is long-established that a contract induced by fraud is not void (*Erlanger v New Sombrero Phosphate Company* (1878) 3 App Cas 1218 ("*Erlanger*") at p.1277 (per Lord Blackburn)). It remains a valid contract until set aside by the representee:

Shalson at [108] (per Rimer J). It is effective to pass title to property, although, where rescission occurs, title may then revest in the transferor.

97. The remedy of rescission has developed both at common law and in equity to which similar but different principles apply. At common law no order of the court is required to rescind because rescission takes effect automatically as a self-help remedy upon an election to rescind being made (e.g., *Brotherton v Aseguradora Cobeguros (No 2)* [2003] EWCA Civ 705 at [27], per Mance LJ). Full *restitutio in integrum* is required, but the court's role is limited to determining whether the party's election to rescind was effective and by awarding judgment on claims and cross claims for benefits which have previously passed (*Snell* at [15-011]). The fact that no order of the court is required and that its availability does not depend on discretionary considerations has recently been confirmed by the Supreme Court in *Hopcraft v Close Brothers Limited* [2025] UKSC 33, [2026] AC 877 ("*Hopcraft*") at [238] in which the issue arose in relation to rescission for bribery.

98. However, Glencore seeks to rescind in equity, not at common law. It does so because it needs to invoke the more flexible tracing rules which are then available. This is necessary, because the Unpaid Ex Tank Oil transferred under the Relevant Sales Confirmations was mixed with other products and lost its separate identity, having been refined into Prax Owned Product with Glencore's consent, and this refined product was then sold.

99. Equitable rescission is a remedy granted by the court in the form of discretionary relief available only at trial (*Hopcraft* at [77]). The contract remains effective and in force until the order of the court seeking to do what is practically just is made (*Erlanger* at p.1278). Although not available without an order of the court, it is more flexible in its ability to respond to all the circumstances of the case and, as Lord Wright said in *Spence v Crawford* [1939] 3 All ER 271 at p.288 in a passage adopted by Sir Donald Nicholls V-C in *Cheese v Thomas* [1994] 1 WLR 129, 137/F:

> "The remedy is equitable. Its application is discretionary, and, where the remedy is applied, it must be moulded in accordance with the exigencies of the particular case."

100. However, it is important to understand what is meant by the application of the remedy being discretionary. It has recently been confirmed that, even in the case of equitable rescission, the discretion to refuse relief altogether is not unrestricted, at least where the remedy is sought for fraudulent misrepresentation. As Fancourt J demonstrated in *Patarkatsishvili v Woodward-Fisher* [2025] EWHC 265 (Ch) ("*Patarkatsishvili*") at [179] and [181], neither *Spence v Crawford* nor *Cheese v Thomas* establish that the court has a discretion to refuse rescission altogether on the general basis that some other remedy would be more just to the parties. Both those cases were concerned with "how the unwinding should be carried out given that the transaction was set aside in equity not whether the transaction should be allowed to stand in the exercise of the court's discretion". It follows that, where fraud is established, there is no residual discretion that the court can exercise simply on the basis that it appears fairer to leave a claimant to recover damages at law (*Patarkatsishvili* at [187]).

101. That does not of course mean that proof by a representee that it was induced to transfer property by a fraudulent misrepresentation necessarily entitles it to rescission of the

contract and return of the property. There are a number of situations relevant to the current application in which rescission will be denied. They include the impossibility of *restitutio in integrum*, affirmation by the representee, unreasonable delay and where third-party rights will be adversely affected. However, *Patarkatsishvili* at [171] to [190] illustrates that, in the case of rescission for fraudulent misrepresentation, *Snell* is correct to conclude at para 14-002 as follows:

> "But it is well established that if *restitutio in integrum* is possible, and if rescission is not otherwise barred, the claimant is entitled to have the contract rescinded as of right."

102. The equitable right to seek rescission of a contract as a result of fraudulent misrepresentation is often characterised as a "mere equity". The following discussion in *Snell* at [2-006] is a useful summary of the characteristics of the equity and its effects:

> "In this context, a mere equity is an inchoate right binding on specific property. In functional terms, to say that a person has a "mere equity" in relation to property means that the property is susceptible to an equitable proprietary claim if and when the claimant elects to enforce it. The claimant must perform some further legal act to cause his claim to crystallise as an equitable interest.
>
> Of itself a mere equity does not give the claimant a beneficial interest or an extant security in the property. These only arise, for example, once the claimant has successfully rescinded the transfer of property or elected to assert an interest in the traceable proceeds of his original asset. Mere equities arising from vitiated transfers of property are sometimes called proprietary "powers" to emphasise their inchoate status, and to distinguish them from the fully vested interests that arise once the claimant elects to enforce them."

103. Relevant parts of this passage were cited with approval in those parts of the judgment of the Privy Council with which all seven members of the panel agreed in *Equity Trust (Jersey) Ltd v Halabi* [2022] UKPC 36, [2023] AC 877 at [104]. For present purposes, one of the important aspects of this summary is that a representee has no beneficial interest in property transferred under a contract which is voidable for fraudulent misrepresentation until such time as the contract is rescinded. This is spelt out by Rimer J in *Shalson* at [108] and again at [119] and is very clearly explained in *Mothew* at p.22. In the case of equitable rescission there is no revesting until the right to rescind has been exercised. Having confirmed that misrepresentation makes a transaction voidable not void, Millett LJ went on to say in *Mothew*:

> "The right to rescind for misrepresentation is an equity. Until it is exercised the beneficial interest in any property transferred in reliance on the representation remains vested in the transferee."

104. For the purposes of Mr Curl's argument, the distinction drawn by the editors of *Snell* between a mere equity and an equitable interest is important but only goes so far. It highlights the fact that, while the equity to seek rescission has some of the characteristics of a proprietary interest (it is capable of exercise against transferees unless they are bona fide purchasers for value without notice), its existence does not without more confer on the person entitled to seek rescission a proprietary interest in

property transferred under a rescindable contract. It is only when recission is effected, which occurs in equity when the court grants the relief sought, that its rights crystallise into an equitable interest. Even if that equitable interest is then treated as relating back to the time at which the representee elects to seek rescission, in the present case that disaffirmation occurred after PLOR went into liquidation.

105. It was therefore after the time at which PLOR was divested of the beneficial ownership of its assets and after PLOR's creditors and members acquired their statutory rights to have those assets administered by the liquidator in accordance with the statutory scheme (*Lehman (No 4)* at [54]). (As PLOR is in compulsory liquidation, those rights arise under sections 143 and 144, together with rule 14.12, which together have the same effect as section 107 in a voluntary liquidation). This might be thought to support PLOR's submission that I cannot be convinced that Mr Rosen was wrong in *Crown Holdings*, a submission which PLOR said is supported by the *obiter* comments made by Rimer J in *Shalson* at [126] cited at paragraph 84 above.

106. However, although an equity to rescind does not, of and in itself, give an interest in the property the transfer of which was induced by a fraudulent misrepresentation, the equity itself is not a mere right *in personam* either (*Goode* at [3-05] as to which see below). Rather, it is an equitable right to impeach a transaction pursuant to which a transferee acquires an interest in an asset. As the editors of *O'Sullivan* explain at [21.29] the claim to recover property on rescission is not just a personal right to obtain title to the property when rescission occurs, it is also an imperfection in the title of the transferee. The equity is binding on the property transferred, it is transferable to a person who is able to fulfil the conditions necessary to enforce it and it is an inherent limitation of the interest that has been acquired. As Sir Terence Etherton C said in *The National Crime Agency v Robb* [2014] EWHC 4384 (Ch), [2015] Ch 520 at [80] "the right or power to rescind, which arose in February 2005, was a property right (albeit not a legal or equitable interest)".

107. One of the difficulties I have in satisfying myself that I must treat Mr Rosen's conclusion in *Crown Holdings* as one I must follow is that he did not address this aspect of the nature of a mere equity anywhere in his judgment. He simply addressed the question on the basis that the equity was no more than a personal claim against the representor and did not examine the consequences which would flow if its character as an inherent limitation of the interest that had been acquired was recognised. It seems to me that the principles apparent from the following passage from *Goode* (at [3-05]) I have referred to above would or should have affected his analysis if they had been drawn to his attention:

> "In general, an equity, that is, a person's right to impeach or qualify a transaction by which another party acquires an interest in an asset, survives the other party's liquidation. An equity is not itself an interest in property; nor on the other hand is it a mere right *in personam*; rather it is an inherent limitation of the interest that has been acquired. A typical equity is a right to rescind a contract by reason of some external vitiating factor such as fraud, misrepresentation or undue influence. This right of defeasance constitutes an inherent limitation of the contract rights. So, where a party is induced by the company's fraud or misrepresentation to enter a contract for the sale of goods or the transfer of other property to the company, he does not lose his right to rescind merely by reason of the winding-up."

108. On this aspect of the case, the decision of the Supreme Court in *Belmont Park Investments Pty Ltd and others v BNY Corporate Services Ltd* [2011] UKSC 38, [2012] 1 AC 383 ("*Belmont*") at [84ff] provides a useful analogue, although nobody suggested that it has any direct application in the present case. It establishes that a contractual term which provides for the withdrawal of an asset from an insolvent estate on bankruptcy is capable of being in breach of what has come to be called the anti-deprivation principle. Where it is, that contractual term will be void. But *Belmont* also confirmed that, where the deprivation occurred other than in consequence of insolvency and was pursuant to a commercially sensible transaction entered into in good faith, the rule did not apply. This is to be contrasted with the situation where the transaction or arrangement avoided the pari passu principle, where it would be ineffective without more: see Lord Collins in *Belmont* at [80ff]. The facts in *Belmont* were complex but, although more often applied in bankruptcy, Lord Collins demonstrated that the relevant principles were equally applicable in bankruptcy and winding up.

109. It follows from this that, if the Transaction Documents were to have made specific provision enabling Glencore to call for a revesting of crude oil supplied under the Relevant Sale Confirmations on discovery that a representation which induced the supply was fraudulent and untrue, *Belmont* supports a conclusion that there is no principle of insolvency law which would have invalidated the provision (see also *Belmont* at [98]). That being the case, it is difficult to see why the exercise of the equity to rescind post-liquidation in precisely the same circumstances, leading as it does to an extinction of the parties' contractual rights as a result of fraud, should be objectionable on the grounds suggested by Mr Rosen.

110. It seems to me that there are also a number of other problems with Mr Rosen's approach. In particular, I am very doubtful that section 283(5) justifies a conclusion that the result in bankruptcy for which *Eastgate* and *Tilley v Bowman* are authority does not apply in a liquidation. In other words, I do not agree that section 283(5), only applicable as it is to bankruptcy not winding up, explains why the equity to rescind remains exercisable after the property of a bankrupt representor has vested in a trustee, but is not exercisable once a corporate representor has gone into liquidation.

111. The way this point was expressed by Mr Rosen is that section 283(5) provides that a bankrupt's estate expressly remains subject to third party rights "so that the personal equity to rescind may still be exercised" (see [43] of *Crown Holdings*), which "may" lead to a difference in operation as between corporate insolvency and personal insolvency such that a mere equity might be capable of assertion against the estate of a bankrupt even though it may not be asserted against the estate of a company in liquidation. Mr Rosen seems to be saying that the *Eastgate* approach does not apply in liquidation, *because* it is section 283(5) which ensures that what is no more than a right *in personam* is preserved in bankruptcy and there is no equivalent provision in a winding up.

112. It is true that in a liquidation there is no express provision equivalent to section 283(5), but the more obvious reason for this is that none was thought necessary because the assets do not automatically vest in the liquidator. It does not follow that the assets which are subject to the *Ayerst* statutory trust are required to be administered by the liquidator free of such rights as would in the case of a bankruptcy fall within section 283(5). Indeed, that would be a surprising result not just because there is no obvious reason for a difference between bankruptcy and liquidation in this area. As Lord

Sumption JSC said in *Lehman (No 4)* at [197], when considering the impact of the statutory stay on creditor litigation against the debtor or its property in the context of all forms of insolvency process:

> "But the principles applied to personal and corporate insolvency were always closely related. Throughout their history, a cardinal feature of both has been that the effect of bankruptcy, winding up or administration on the existing liabilities is procedural, not substantive."

113. Lord Richards JSC also emphasised in *Manhattan* at [58] how the form of statutory trust which was recognised in the cases considered by Lord Diplock in *Ayerst*, and on which Mr Rosen based his decision, drew on familiar analogies pursuant to which the courts equated the position in a liquidation with that in the administration of a deceased estate or a bankruptcy. Indeed, one of the principal arguments made against the recognition of a statutory trust in *Ayerst* was that the bankruptcy trust which arose on the vesting of a bankrupt's assets in a trustee did not apply in a liquidation because there was no change in the legal owner of the assets to be distributed amongst the creditors. This submission was rejected, which seems to me to point to a conclusion that the nature of the *Ayerst* trust is unlikely to protect assets from the exercise of an equity to rescind in circumstances in which the vesting on a bankruptcy would not do so.

114. In my view there is another closely linked problem with the approach Mr Rosen adopted to section 283(5). At [35] of his judgment, Mr Rosen characterised the equity to rescind as a personal right against the fraudster and said at [44] that it did not encumber the relevant property. This then led him to the conclusion that, because a merely personal right was preserved by section 283(5), but was not preserved in a liquidation, the result in *Eastgate* could stand in a bankruptcy where it would not apply in a liquidation. In my view, this analysis may be flawed for a different reason.

115. As Chadwick LJ explained in *Avis v Turner* [2007] EWCA Civ 748, [2008] Ch 218 at [22] and [23], section 283(5) is the codification of the long-established principle of bankruptcy law that a trustee in bankruptcy (as statutory assignee) takes the bankrupt's property subject to all the equities and liabilities which affected it, or to which it is subject. However, it appears from the discussion in *Mountney v Treharne* [2002] EWCA Civ 1174, [2003] Ch 135 at [40ff] that the equities and liabilities so identified must affect the property in the sense of them being binding on the property itself rather than just the person. I think it is well arguable that the reason that section 283(5) is consistent with the result in *Eastgate* is because both the section and the case demonstrate that equities and liabilities will be binding in the bankruptcy if they affect the relevant property in that sense. The consistency does not flow from Mr Rosen's conclusion that both the result in *Eastgate* and section 283(5) enable the bankrupt's property to be subjected to a purely personal liability.

116. Having regard to those considerations, I think that it is open to the court at any trial to conclude that it is clear that Mr Rosen was wrong in the approach he adopted in *Crown Holdings*. I also consider that the two principles of insolvency law relied on by Mr Curl (see paragraph 80 above) do not have the significance for which he contends.

117. As to the first principle, it is certainly true that the IA 1986 provides for a single point in time both for the quantification of the debts and liabilities of a company in liquidation

and for the crystallisation of a person's status as against a company in liquidation. The imposition of the statutory trust is arbitrary in its effect, but, as Lord Sumption JSC explained in *Angove* at [25], it is necessary for a point of time to be identified at which the individual rights of unsecured creditors are replaced with the collective right to participate in the statutory scheme for the realisation and distribution of the company's distributable assets.

118. However, that does not of itself affect the question of whether the statutory trust operates to remove a proprietary right in the form of the equity to rescind, on the basis that, as at the liquidation date, that right has not yet been exercised so as to revest title in the representee. For the reasons that I have already given, there is real substance in Glencore's argument that, as at the liquidation date, the property which otherwise fell within the *Ayerst* statutory trusts was and remained subject to the equity to rescind for fraudulent misrepresentation.

119. As to Mr Curl's second principle, I have difficulty in accepting his submission that Glencore's right to exercise the equity to rescind is itself provable by Glencore in its capacity as a creditor. The way that he put the point was that pre-liquidation rights which are not vested ownership rights in specific assets are provable unless excluded from proof.

120. It is of course true that liabilities to creditors to pay money or money's worth are subject to the statutory machinery for the proving of debts (rules 14.1(3), 14.1(6) and 14.2(1)) and that the category of claims which are provable has expanded over time. However, the fact that a creditor has a claim which is provable does not in and of itself mean that it does not also have rights which are exercisable independently of the right to participate by way of proof for a dividend out of the assets which would otherwise be subject to the statutory trust. The obvious example is that of a secured creditor whose proof will include a claim for the full amount of its debt, but who must also value its security in accordance with rule 14.4(1)(g). Having done so, it is then entitled to enforce its security outside the winding up but nonetheless receive a dividend for the balance. In that category of case, the reason that the creditor is entitled to proceed is that it is enforcing a right not against the company but to its own property (e.g., *Aro* at p.204).

121. I agree that the position is not identical where the equity to rescind is sought to be exercised, because the asset which the representee seeks to recover by disaffirming the contract induced by the representor's fraud was not its own property at the time the company went into liquidation. However, the claim to exercise the equity to rescind is itself a right which is binding on the property transferred under the fraudulently induced contract, and it is not at all obvious to me that it is a liability of PLOR's "to pay money or money's worth" so as to be a liability within the meaning of rule 14.1(6) and thereby capable of proof as a debt under rule 14.2(1).

122. The reason that Mr Curl submitted that it is, was because what he called "the ultimate relief" Glencore seeks is a "debt" capable of being valued in money or money's worth and is therefore susceptible to proof whether PLOR was subject to it when it went into liquidation (rule 14.1(3)(a)) or became subject to it after it went into liquidation by reason of an obligation incurred before that time (rule 14.1(3)(b)). This was a point for which Mr Curl cited no directly applicable authority and an application under section 130(2) is not an appropriate context in which to reach a final determination. However,

I think that the submission suffers from a misunderstanding of the nature of Glencore's claim.

123. If equitable rescission is granted, Glencore will be entitled to a return of the Unpaid Ex Tank Oil transferred under the Relevant Sales Confirmations, because the title which PLOR acquired was defeasible. To the extent that the Unpaid Ex Tank Oil has lost its identity or passed into the hands of a third party, all of which appears to have happened, Glencore may be able to trace into new assets acquired in whole or in part with the Unpaid Ex Tank Oil. However, as Lord Millett explained in *Foskett v McKeown* [2001] 1 AC 102 ("*Foskett*") at p.128D, tracing is a process by which Glencore will have demonstrated what has happened to its property, identified its proceeds and the persons who have handled or received them, and justified its claim that the proceeds can properly be regarded as representing that property.

124. The result of that process will be to restore to Glencore that which the law treats as representing its own property to which it has become entitled on the equity to rescind taking effect. I doubt that this can properly be treated as a liability to pay money or money's worth within the meaning of rule 14.1(6), even if it is properly to be regarded as arising out of an obligation to make restitution. The concept of paying money or money's worth is focused on discharging the obligations of a creditor to its debtor in respect of an *in personam* claim. It does not sit at all happily with the vindication of a claimant's right to demonstrate that an asset is treated by equity as representing the property which has revested in it.

125. Nor do I consider that Mr Curl gets much assistance for his argument by reference to *Nortel* and *Lehman (No 4)*. I agree that *Nortel* at [66] makes plain both that the definition of what is a provable debt is strikingly wide and that the legislature has progressively widened the definition of provable debts (*Nortel* at [90]). However, Lord Neuberger PSC went on to make clear that this had occurred in the context of a narrowing of the class of non-provable liabilities, a point which he reiterated in *Lehman (No 4)* at [33], where he said that the statutory policy was that "claims should, if at all possible, be admitted to proof rather than being excluded from proof" but went on to say that nonetheless some non-provable liabilities still survive. It is therefore not directed at any restriction in the exercise of an established equity which is binding on the company's property.

126. In other words, the expansion of the categories of provable claim referred to by Lord Neuberger PSC in *Nortel* and *Lehman (No 4)* relates to unsecured claims by creditors which would otherwise be non-provable (i.e., category (7) in the waterfall he described in *Nortel* at [35]). In my view, Lord Neuberger was explaining that, save for identified exclusions, all pre-liquidation *in personam* claims against an insolvent company should be caught by the proving process. He was not thereby pointing to the existence of any legislative policy that a more restrictive approach should now be taken to the ability of a creditor to exercise rights other than the creditor right to prove for a dividend to be paid out of the statutory trust.

127. Mr Curl's examples of the instances in which existing contractual rights are varied by the insolvency scheme do not in my view assist his case either, and if anything point the other way. There is no doubt that, so far as unsecured creditors are concerned, the rights which they enjoy before a company goes into liquidation are exchanged for the rights which they have under the terms of the *Ayerst* statutory trust. The examples

which he gave of compulsory foreign currency conversion, mandatory insolvency set-off and the replacement of contractual rights to interest with the statutory entitlement under section 189 are all examples of the manner in which the express terms on which the statutory trust is to be administered varies those rights. Similarly, the avoidance of steps such as executions and the levying of distress under section 128 affects creditor rights and does so by reference to the date at which a liquidation commences.

128. However, these are all examples of specific instances in which creditor rights are explicitly varied by the terms of the statutory scheme which impose the *Ayerst* statutory trusts. They do not appear to me to assist where there is no such variation. While there is no explicit provision to the effect that the assets to be applied under those trusts (whether in accordance with section 107, or in accordance with sections 143 and 144 and rule 14.12) remained subject to the equity to rescind in the absence of one of the established bars to rescission, I was not shown any explicit statement to the contrary. On that basis the result in *Eastgate* and *Tilley v Bowman* cannot be explained on the grounds that the equity to rescind is a personal right which survives bankruptcy. Rather, a proper understanding of the nature of the equity leads to a conclusion that it has characteristics which survive bankruptcy as rights which are to be regarded as relating to property comprised in a bankrupt's estate.

129. Mr Rosen and Mr Curl placed some reliance on the fact that Lord Mustill said in *Goldcorp* at pp.102-103 that *Eastgate* was wrong. I do not read what Lord Mustill said in that way. In the passage referred to by Mr Rosen, Lord Mustill was dealing with a situation in which a customer had been misled into purchasing goods from the company in liquidation and the question arose as to whether, on rescinding the relevant contract, the customer was then entitled to a proprietary right exercisable against the whole of the vendor's assets superior to the rights of all the vendor's other creditors. In that context, he said:

> "the claimants would have to contend that in every case where a purchaser is misled into buying goods he is automatically entitled upon rescinding the contract to a proprietary right superior to those of all the vendor's other creditors, exercisable against the whole of the vendor's assets. It is not surprising that no authority could be cited for such an extreme proposition. The only possible exception is [*Eastgate*]. Their Lordships doubt whether, correctly understood, the case so decides, but if it does they decline to follow it."

130. I too doubt that that is what *Eastgate* decided, not least because that case was not concerned with rescission by a purchaser nor was it concerned with a proprietary claim against the whole of the vendor's assets. All in all, I do not think that this passage from *Goldcorp* can be read as deciding that either *Eastgate* or any relevant part of its reasoning was wrong.

131. The passage from *Goldcorp* which was referred to by Mr Rosen was also discussed by Rimer J in *Shalson* at [122] to [126] when giving detailed consideration to the effect of the principle that, on rescission, the parties are put back in the position they would have been in if no contract had been entered into in the first place. Rimer J went on to consider the line of authority which supported the proposition that, upon rescission of a contract for fraudulent misrepresentation, the beneficial title which passed to the representor under the contract revested in the representee such that it can be regarded as having always been in equity his own property. He considered in particular *Lonrho*

Plc v Fayed (No 2) [1992] 1 WLR 1, 12 and *El Ajou v Dollar Land Holdings Plc* [1993] 3 All ER 717, 734 where Millett J said that, on rescinding a contract for fraud, the revesting of the beneficial interest in the property transferred will operate at least to the extent necessary to support an equitable tracing claim.

132. Rimer J's conclusion at [126] of his judgment in *Shalson* was that nothing said by Lord Mustill in *Goldcorp* affected this conclusion, because it is no part of the revesting theory that all intermediate transactions occurring prior to the rescission can be undone. He gave the example of an interest acquired by a bona fide purchaser for value without notice of the equity. He then went on to express the views I have cited in paragraph 84 above to the effect that he would be surprised if any subsequent rescission entitled the representee to say that the property transferred under the voidable contract must be regarded as having at all times been his property so as to fall outside the *Ayerst* statutory scheme.

133. It seems to me that, although Rimer J's views were *obiter dicta*, they support the conclusion reached by Mr Rosen and the arguments which have been advanced by Mr Curl. If correct, their effect is to treat the imposition of the *Ayerst* statutory trusts as giving creditors the rights they have under the insolvency scheme the same priority in relation to property transferred pursuant to a fraudulent representation, as the rights of a good faith purchaser. This would be achieved even though those trusts do not give creditors a beneficial interest in the relevant property. However, as with Mr Rosen's decision in *Crown Holdings*, these comments were made without any examination of the impact or extent of the long-established principles that property is available for distribution to an insolvent's creditors subject to the equities which are binding on it as an inherent limitation of the interest that has been acquired.

134. More generally as to *Eastgate* and *Tilley v Bowman*, it seems to me that there is some substance in Mr Curl's submission that another real distinction between them and the other bankruptcy cases relied on by Mr Cumming (see paragraphs 67ff above) on the one hand, and *Crown Holdings* and the current case on the other, is that the old bankruptcy cases are all about the exercise of a representee's right to rescind for fraudulent misrepresentation at common law. In none of the cases was the court asked to exercise its equitable jurisdiction to rescind and questions of equitable tracing did not arise; the items of property transferred under the voidable contracts had retained their identity in the hands of the representor (or in the case of *Tilley v Bowman* the dishonest retailers' pawnbroker). Enforcement of the right to recover the property transferred to the representor did not require the intervention of a court exercising jurisdiction in equity.

135. I can see that this may be a significant distinction, but I am not satisfied that it affects the ultimate answer. It seems to me improbable that, in circumstances in which rescission is available at common law notwithstanding the intervention of the *Ayerst* statutory trusts, it might not be available in equity in similar circumstances. If none of the established bars to rescission in equity are available to PLOR, and if tracing is otherwise possible, I do not see why that factor alone should operate to distinguish the outcome from *Eastgate* and *Tilley v Bowman*.

136. This is an application under section 130; it is not the trial of an action. Although I heard detailed argument on Ground One, it was only PLOR which submitted that I should decide the point in its favour as a complete answer to the application. Glencore did not

submit that I should decide the point on a summary basis but simply said that its case was sufficiently arguable to justify the grant of leave, all other things being equal. I agree with this submission. For the reasons I have given, I also agree that the arguments it has advanced are arguments of real substance and that Glencore is correct to submit not just that Ground One is arguable, but also that it is seriously arguable that the court at any trial will be convinced that Mr Rosen was wrong in the conclusions he reached in *Crown Holdings*.

137. This does not, however, resolve the application, because PLOR submitted that there were three other merits-based grounds on which leave should be refused. I shall consider them next before explaining my final conclusions taking into account not just the arguability of Glencore's claim and PLOR's defence, but also what is right and fair in all the circumstances of the case.

Ground Two: Partial Rescission

138. The second basis on which PLOR contends that Glencore cannot seek to rescind the contracts for the supply of crude oil in accordance with the Relevant Sales Confirmations is that to do so would contravene the principle that it is not possible to rescind a particular contract which forms part of a wider indivisible bargain. As Saini J explained in *Trafigura Pte Ltd v Gupta* [2026] EWHC 159 (Comm) ("*Trafigura*") at [259], rescission is concerned with putting the claimant and the defendant back in the position in which they were before the impugned transaction was made. If a contract is to be rescinded, it is all or nothing. A representee cannot elect to rescind only the part said to have been affected by the misrepresentation, whilst retaining the advantages of the remainder of the contract. Because the law does not permit partial rescission, this prohibition extends in some cases to a situation in which the contract in question is part of a wider transaction, the components of which are commercially interdependent.

139. The ambit and rationale for this rule is explained by Colman J in *De Molestina v Ponton* [2002] 1 All ER (Comm) 587 ("*De Molestina*") at [6.1] and [6.2] and is based on the proposition that the court has no power to create a new bargain for the parties. As Colman J said at [6.2]:

> "What has been induced is the original bargain and it is the purpose of the remedy to return the parties to their position before that particular bargain was made. There is therefore no room for any form of equitable engineering directed to reconstructing the fabric of the original contract."

140. Ms Johnson, who argued this part of the case for PLOR, submitted that the question for the court is whether there is contractual interdependence between two or more agreements. If there is, she said that it is not possible for one to be rescinded without rescission of the other or others. By contractual interdependence she meant:

i) commercial interdependence, where the agreements were contracted each in consideration or contemplation of the others and were intended to be performed together as described by Sir Jeremy Cooke *in Deutsche Bank v Unitech* [2017] EWHC 1381 (Comm) at [43]; and

ii) structural interdependence, which is best explained by the following passage from Colman J's judgment in *De Molestina* at [6.9]:

> "If a representee is induced to enter into separate contracts A and B by the same misrepresentation, it may be that performance of contract B depends on the prior performance of contract A. In that case one cannot rescind contract A without also rescinding contract B. To permit the survival of contract B would be inconsistent with the principles of *restitutio in integrum*. But there may be cases where, although both contracts were induced by the same misrepresentation either can be performed without performance of the other. In that case the representee may rescind unless the contract not sought to be rescinded would never have been entered into by the parties without also entering into the other."

141. Ms Johnson submitted that Glencore could not rescind the agreements governed by the Relevant Sales Confirmations because the obligations under them cannot be performed in isolation from the Crude Supply Agreement and the Framework Agreement, under the latter of which the relevant payment obligations arose. She pointed out that each of the Relevant Sales Confirmations expressly incorporated the payment terms of the Crude Supply Agreement, which itself provided that the price for each DAP Sale would be paid in accordance with the Framework Agreement. This in turn provided for the price payable by PLOR under the DAP Sale and the price payable by Glencore for the Into Tank Sale to be set off against each other.

142. The DAP Sale and the Into Tank Sale are interdependent. I also accept that without making the DAP Sale under the Relevant Sales Confirmation, PLOR would not be able to perform its obligation to make an Ex Tank Sale in respect of the crude oil transferred from Glencore to PLOR under the relevant DAP Sale and from PLOR back to Glencore under the relevant Into Tank Sale. However, this does not mean that the Relevant Sale Confirmations cannot be rescinded if, as a matter of construction, each of them represents a separate severable bargain, albeit subject to terms derived from other Transaction Documents. This is more likely to be the case if they are bargains for the sale of goods by instalments (per Saini J in *Trafigura* at [256ff]).

143. Mr Cumming relied on the following indicia, similar to those discussed in *Trafigura*, that this was the case in relation to the contracts represented by each of the Relevant Sale Confirmations, and as a bare minimum there is a serious issue to be tried that it was:

i) Recital (C) to the Crude Supply Agreement recorded that the parties intended to enter into a series of transactions for the sale and purchase of crude oil required by the Refinery, which indicated that the Crude Supply Agreement was an umbrella agreement, with each of the Sale Confirmations representing a severable transaction within that series of transactions.

ii) The word "Cargo" was used repeatedly throughout the Crude Supply Agreement, clause 1.1 of which defined it as "a full or part cargo of Crude Oil carried on a Vessel, being sold and delivered by the Seller and purchased by the Buyer pursuant to the terms of a Sales Confirmation". This reflected a bargain based on each Sales Confirmation which envisaged the delivery of a series of instalments on different vessels.

iii) Clause 12.1.1 of the Crude Supply Agreement, provided for payment of a "Crude Oil Delivery Price" in respect of each "particular Cargo" arising "under a Sales Confirmation". This reflected the fact that the payment obligation arose separately and in accordance with the terms applicable to each separate delivery.

iv) The structure of clause 3.1 of the Crude Supply Agreement contemplates that each Sales Confirmation would be entered into separately by the parties and that the delivery of Cargos would be scheduled by the Sale Confirmations rather than under the Crude Supply Agreement.

v) The form of each Sales Confirmation, a template for which was set out in Schedule 4 of the Crude Supply Agreement, stipulates that the Crude Supply Agreement is to be incorporated in each Sales Confirmation, which itself denotes that each Sales Confirmation is separate and severable from the Crude Supply Agreement.

144. In my view, Glencore's case on this issue gives rise to a serious and substantial question to be tried. I do not think it is at all clear that the right analysis is that the performance of the Framework Agreement depended on the prior performance of the Relevant Sales Confirmation or the Crude Supply Agreement, which is the way the point was put by Ms Johnson. Rather, I consider it to be seriously arguable that each of the Relevant Sales Confirmations reflected a severable contract for the sale and purchase of separate shipments of crude oil, the terms of which incorporated provisions of the Framework Agreement and the Crude Supply Agreement, but which were not themselves reflected in those agreements. The Framework Agreement and the Crude Supply Agreement operated as overarching agreements separately from the Relevant Sales Confirmations, even though their terms were applicable to every Sales Confirmation, but were separately applied as and when a Sales Confirmation was agreed.

145. Put another way, the five bargains which Glencore seeks to rescind are represented by the Relevant Sales Confirmations which include terms derived from the Framework Agreement and the Crude Supply Agreement. But, for the purposes of rescinding the bargain, such terms are only applicable to the Relevant Sales Confirmations and not any other bargain which has been agreed under the umbrellas of the Framework Agreement and the Crude Supply Agreement. The Framework Agreement and the Crude Supply Agreement can continue to apply to the other Sales Confirmations, notwithstanding the recission of the bargains reflected in the Relevant Sales Confirmations.

146. Ms Johnson also made a subsidiary, but nonetheless significant, point about the agreement reflected in the Term Sheet. She submitted that, at the time it was entered into, Glencore stood on its rights under the floating charge over the Prax Owned Product in order to extract a one-off product processing fee of US$40 million. I can see the argument that this amounted to a benefit which Glencore acquired, and that what occurred is capable of being relevant both to the question of affirmation and whether that payment ought to be restored to PLOR in order to ensure that *restitutio in integrum* is achieved. I shall turn to affirmation next but, as to *restitutio in integrum*, it s eems to me that this is the kind of issue which needs to be determined after a proper consideration of the facts, thereby enabling an analysis of how any unwinding should

be carried out in circumstances in which the underlying transaction has been set aside in equity. It is not of itself a reason for refusing rescission in the first place.

Ground Three: Affirmation

147. The third ground on which PLOR said that leave to proceed should not be granted is that Glencore permanently lost its right to rescind or seek rescission when it elected to waive that right and affirmed the contract. Ms Johnson submitted that affirmation occurs when the party entitled to rescind unequivocally manifests an election not to rescind the contract, but to continue to be bound by it. She also submitted that the manifestation may be express or implied through words or conduct, and that the test is objective*: Insurance Corporation of the Channel Islands v Royal Hotel Ltd* [1998] Lloyd's Reports IR 151 (per Mance J at p.162). She said that, in order to affirm, the innocent party must have knowledge of the material facts that would have entitled them to rescind, although knowledge of the details of the fraud is not required: *Campbell v Fleming* (1834) 1 Ad & El. 40.

148. There was not much between the parties on the applicable principles, although Glencore stressed the need that something more than suspicion is required. It submitted that in order for a party to affirm a contract, the affirming party (i) must have full knowledge of the circumstances giving rise to the right to rescind and (ii) must know (or reasonably be expected to know) that it has a right to rescind the contract: see *Chitty on Contracts* (36th edn, 2025) at [10-144].

149. It was submitted by PLOR that Glencore had material knowledge of the proceedings brought by SOL in relation to the Securitisation Fraud by 15 July 2025. Ms Johnson said that, against the background of the collapse of the Group into insolvency on 30 June 2025, Glencore was aware that the claims against Mr Soosaipillai could well have involved allegations of fraud, and that any such fraud could impact its rights against PLOR. She then said that, by serving notice of crystallisation of its floating charge and by its subsequent commercial negotiations with PLOR leading to payment of the processing fee and the other matters reflected in the Term Sheet, Glencore manifested a clear intention to be bound by the Transaction Documents. It is said that there was nothing in Glencore's subsequent conduct which manifested any contrary intention until Jones Day's letter of 22 October 2025, and even then, their letter was equivocal as to Glencore's position.

150. Glencore's response to the allegation of affirmation is that there is insufficient evidence to allow the court to find that Glencore unambiguously affirmed the contracts reflected in the Relevant Sales Confirmations with sufficient knowledge of its rights to seek to rescind them. Mr Cumming submitted that the fact that, on learning of the insolvency of PLOR, Glencore merely suspended performance of the Framework Agreement, the Crude Supply Agreement, and the Storage Agreement rather than terminating them, is strictly irrelevant to Glencore's Proposed Claim. This is because the decision not to terminate took place before Glencore learned of the matters that entitled it to seek to rescind the Relevant Sales Confirmations. He said that it was only on 28 August that Glencore learned that Mr Soosaipillai had engaged in extensive fraudulent conduct and that the representations relied on by Glencore in its proposed claim were false.

151. Mr Cumming stressed that Glencore therefore had insufficient knowledge of the fraudulent conduct alleged against Mr Soosaipillai at any time prior to 28 August (let alone before the time the Term Sheet was agreed) to justify Glencore in taking any steps to rescind any contract with PLOR let alone any of the Relevant Sales Confirmations. He also submitted that it then took Glencore only seven weeks to investigate and obtain advice before writing to put PLOR on notice of its claims. It did this by Jones Day's October letter, in which it alleged that Glencore had a claim for rescission of certain of the Sales Confirmations and the benefit of a constructive trust over assets traceable to products supplied under them. It claims that this letter was the first step it took towards rescinding the Relevant Sales Confirmations and was sent with "all due expedition".

152. He also stressed that the OR's own evidence made clear that all of the crude oil supplied by Glencore had been converted into refined product by 9 August 2025, which was almost three weeks before Glencore had sufficient knowledge of the facts to justify rescission. He therefore submitted that the answer to the question of whether Glencore affirmed the contract, having full knowledge of the circumstances giving rise to its right to rescind and knowing (or reasonably being expected to know) that it had such a right, is no.

153. PLOR's response to this was to point to the significant period of time from the commencement of the liquidation to the issue of this application almost six months later, during the course of which Glencore continued to proceed on the basis that none of the contracts had been or would be disaffirmed. It said that, during this period the OR, the Special Managers and all other stakeholders conducted themselves on the basis that the statutory insolvency waterfall would apply unaffected by any proprietary claim from Glencore based on rescission of any of the Sales Confirmations. It said that, throughout this period, Glencore stood back and permitted, in accordance with the Term Sheet (and therefore notwithstanding its floating charge), the refining and sale by PLOR to third parties of the Prax Owned Product into which it now seeks to trace.

154. I accept that it may well turn out to be the case that Glencore's conduct during this period was sufficient to amount to an affirmation of the Relevant Sales Confirmations from which Glencore is not now entitled to resile. The impact of its agreement to the Term Sheet and the manner in which it allowed the liquidation to proceed without advancing its asserted right to rescind for as long as it did will require very careful scrutiny at any trial. I accept that the evidence at trial may well establish that, up until 19 December 2025, the OR was entitled to conduct the liquidation (a) on the basis that Glencore was only relying on its rights as the holder of floating charge over the Prax Owned Product, (b) that he did so on the basis of the representations made by Glencore as recorded in the Term Sheet and (c) that Glencore waited much too long before resiling from what it had agreed.

155. However, in my view this is one of those issues which will prove to be very fact sensitive and is not susceptible to summary determination on an application under section 130. In circumstances in which the OR has confirmed that all of the Unpaid Ex Tank Oil in the CSTs had been refined in some way by 9 August 2025, which would appear to be before Glencore had knowledge of the fraud, it would be wrong to make a finding either that Glencore affirmed the Relevant Sales Confirmations or indeed that it delayed too long before exercising what it contends to be its right to seek rescission. I have therefore reached the conclusion that, for the purposes of this application, it would be wrong to proceed on the basis that Glencore does not have a seriously

arguable case that in all the circumstances it did not affirm the contracts represented by the Relevant Sales Confirmations.

Ground Four: Mixing and the impossibility of tracing

156. In its evidence in opposition to the application, PLOR contended that it is not possible to trace or identify the Unpaid Ex Tank Oil that Glencore supplied pursuant to the Relevant Sales Confirmations into the final refined products sold by the refinery and that it had ceased to exist as an identifiable asset. In other words, it was said to be impossible to identify what proportion of Prax Owned Product or its proceeds could be said to be attributable to the crude oil that Glencore supplied under the contracts sought to be rescinded.

157. In making this submission, PLOR accepted that tracing in equity is the process of identifying a new asset as the substitute for an original asset: *Foskett v McKeown* [2001] 1 AC 102 ("*Foskett*") at p.127B-C. As Lord Millett went on to say (at p.128D), it is:

> "…a process by which a claimant demonstrates what has happened to his property, identifies its proceeds and the persons who have handled or received them, and justifies his claim that the proceeds can properly be regarded as representing his property".

158. Ms Johnson submitted that, although it was ultimately a question of evidence, there are limits to what can achieved by a process of equitable tracing. She pointed to the detailed explanation from the OR of what he called the continuous process, which also in some instances involved products created during the process being fed back into earlier stages of the refining process.

159. On this application, it is not appropriate for me to describe the very detailed evidence as to the way in which the refining process worked. I can summarise it by saying that it involved (i) the physical combination of the crude before refining, (ii) the introduction of third party inputs integral to the refining process, (iii) the physical and chemical transformation of the crude inputs during the refining process, (iv) the inevitable mixing in intermediate tanks of refined products derived from different batches of crude and (v) a final blending process. Post-appointment, the OR continued to operate the Refinery by using the existing linear programme (referred to in the evidence as the LP), but the evidence is that in practice it is impossible to relate what was planned under the LP to what actually happened in practice.

160. In very short summary, the OR's evidence was that the consequence of all this is as follows (a situation which Glencore permitted to continue by consenting to the arrangements reflected in the Term Sheet):

> "It is therefore not possible to say that a given parcel of crude emerged as a given finished product a fixed time after entry and any attempt to do so would both be factually wrong and would fundamentally oversimplify the complexity of the refining process.
>
> …

> The LP was entirely forward-looking. It was used to plan what should happen; it did not record what actually happened. The LP cannot be used to reconstruct, retrospectively, the path of any specific cargo through the Refinery to any specific finished product, and it cannot assist in tracking a molecule of crude oil through to any refined product. As explained below, individual shipments cannot be tracked through the multi-crude refining process used in the Refinery".

161. It was also said by PLOR that the position was further complicated by the fact that the crude oil in the CSTs when PLOR went into liquidation was purchased from Glencore (and paid for) in accordance with the arrangements reflected in the Term Sheet. The products produced from that crude were then fed into the same tanks that were likely already to contain material derived from the Unpaid Ex Tank Oil supplied under the Relevant Sales Confirmations. Any material derived from the Unpaid Ex Tank Oil that was still present in intermediate or product tanks at the date of appointment would therefore have been further mixed with products derived from crude which was subsequently purchased under the Term Sheet.

162. There was then yet further complexity arising out of the manner in which the proceeds of sale of Prax Owned Product were dealt with, a process which reflected the permission to deal with floating charge assets which had also been granted under the Term Sheet. PLOR then submitted that, taken in the round, it will not be possible for Glencore to establish even an arguable case that it can trace into any product or money representing Unpaid Ex Tank Oil supplied under the Relevant Sales Confirmations.

163. Glencore did not respond to these submissions by challenging the essence of the OR's description of the refining process. But it did say that PLOR's explanation of the inherent complexity of the tracing that was required was in some respects overstated and in any event was misconceived as an answer to Glencore's case. It said that PLOR's submissions were based on the mistaken premise that Glencore was seeking to rescind at common law and that, once this misapprehension was appreciated, PLOR's own evidence illustrated that it was possible to attribute appropriate percentages of the refined product to the Unpaid Ex Tank Oil which was supplied under the Relevant Sales Confirmations.

164. In support of this submission, Glencore relied on the proposition that equitable tracing is a process which will allow it to trace into the new asset (the refined product and its proceeds) because it was acquired in whole or in part with the original asset (the crude oil), which will have revested on rescission being granted. As Lord Millett said at p.128C of *Foskett* "What he traces, therefore, is not the physical asset itself but the value inherent in it". It submitted that this value could easily be quantified by applying appropriate percentages to the proceeds of the Prax Owned Product based on the extent to which those proceeds were attributable to the Unpaid Ex Tank Oil.

165. Glencore therefore submitted that chemical transformation of the crude oil during the refining process did not extinguish the ability of Glencore to identify the value in the refined product and its proceeds which is properly attributable to the Unpaid Ex Tank Oil supplied under the Relevant Sales Confirmations. It said that, if the court permits it to rescind the Relevant Sales Confirmations in equity, it will be entitled to assert an appropriately constructed proprietary claim. This can be fashioned to recognise such value in the refined product as is properly attributable to the crude oil to which, but for

its use in the refining process, Glencore would otherwise be able to assert a proprietary claim (i.e., the Unpaid Ex Tank Oil).

166. I do not underestimate the difficulty which, on the current evidence, Glencore may have in conducting the tracing exercise which is required to ensure that equitable recission is not futile. However, if it overcomes at trial the other bars to rescission which I have considered earlier in this judgment, I think that Glencore has done enough to demonstrate that it has a seriously arguable case that it will be able to trace into some at least of the property which is still in the hands of the OR.

Conclusion

167. These conclusions on the arguability of Glencore's proposed claim go most of the way towards a determination that the court should grant leave to proceed on the basis that Glencore has a sufficiently serious and substantial claim to rescind the Relevant Sales Confirmations and to trace into Prax Owned Product produced from the Unpaid Ex Tank Oil or its proceeds. That does not necessarily provide a final answer to the application if there is some other more convenient means by which the dispute can be resolved.

168. In my view, none has been identified and the purposes of the section 130 stay identified by Patten LJ in *Lemma* are not engaged. As I explained in paragraphs 119ff, the nature of the dispute is such that this is not a case in which that determination can appropriately be dealt with by the OR making a decision on a proof submitted by Glencore. Its essence is that of a proprietary claim in which Glencore seeks to establish an entitlement to trace into property which it says represents property that will have revested in it on rescission. The merits are sufficiently arguable, which means that the dispute must be determined by some means or other so that the estate can be fully wound up. In such cases, and like the different but sufficiently similar case of *Coregrange*, it is long-established that it will normally be right and fair for leave to proceed to be granted (*Re David Lloyd & Co* (1877) 6 ChD 339).

169. It was not suggested by the OR that there was any reason connected to the more efficient administration of the estate that the defence of the proceedings could more conveniently be dealt with at a later stage in the liquidation, nor was it suggested that an application for directions (such as that made in *Crown Holdings*) had any procedural or other advantage over proceedings in the form proposed by Glencore. In all these circumstances, I am satisfied that it is right and fair for the issues I have considered in this judgment to be determined by the proceedings that Glencore seeks to pursue, and I shall therefore grant the relief sought.