

COMMERCIAL FRAUD LAWYERS ASSOCIATION

RECENT DEVELOPMENTS IN THE OFFSHORE WORLD

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PRESENTED BY

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BRITISH VIRGIN ISLANDS CAYMAN ISLANDS GUERNSEY JERSEY
CAPE TOWN LONDON SINGAPORE



INTRODUCTION

Nicolas Journeaux

OFFSHORE FREEZING AND DISCLOSURE ORDERS FOLLOWING ENRC V ZAMIN

Presented by Richard Holden

ENRC V ZAMIN [2015] JRC 2017

"effectively police the freezing order and so that the judgment creditor has all the information he needs to execute the judgment anywhere in the world; the whole for the purpose of ensuring the judgment is not rendered nugatory."

ANCILLARY DISCLOSURE

■ Policing

- *Johnson Matthey v Aria* 1985 JLR 208
- *Milner v Milner* 2000 JLR 266

■ Automatic?

- *Armco v Donohue* (1999)
- PD RC 15/04

DISCOVERY IN AID OF EXECUTION

■ Independent

- *Apricus Investments v CIS Emerging Growth Ltd* 2003 JLR N40
- *Africa Edge v Incat* 2008 JLR N41
- *Leeds v Admatch* 2011 JLR N36
- *Jomair v Hourigan* 2011 JRC 042

FOREIGN DEFENDANTS

- *Dalemont v Senatorov* [2012] JRC 014

SO WHAT?

- WWFO = WWDO
- Execution = WWDO anyway
- Release for collateral use
 - *Apricus Investments v CIS Emerging Growth Ltd* 2004 JLR N40

EVIDENCE FOR TRIAL?

- Release
- Norwich Pharmacal
- Letters of Request

NP V LOR?

- *R (Omar) v Foreign Secretary* [2014] QB 112 (CA)
- *Grupo Torras SA v RBS* (1990)
- *New Media Holdings v Capita* [2010] JLR 272
- Service of Process and Taking of Evidence (Jersey) Law 1960

NPS POST JUDGMENT?

- *Mercantile Group v Aiyela* [1994] QB 366
- *NML Capital v Chapman Freeborn* [2013] EWCA Civ 589

RECOGNITION OF FOREIGN RECEIVERSHIP APPOINTMENTS

Presented by Karen Le Cras



RECOGNITION OF APPOINTMENT OF FOREIGN RECEIVERS IN GUERNSEY AND JERSEY

- *Terry v Butterfield (Guernsey) Limited* (2005-06 GLR 327)
 - First consideration by Guernsey Court of jurisdiction to recognise such appointments
 - Application of “sufficient connection” test
 - What is a “sufficient connection” for recognition of appointment?
 - where company incorporated
 - defendant submitted to the jurisdiction
 - recognised by law of place of incorporation
 - where management and control exercised
 - country in which the company carries on business
 - Must not be enforcement of a penal judgment

RECOGNITION OF APPOINTMENT OF FOREIGN RECEIVERS IN GUERNSEY AND JERSEY

- *In the matter of the Assets of Ablyazov* [2012 (1) JLR 44]
 - Jersey’s turn to consider jurisdiction
 - Agreement with the “sufficient connection” test
 - Scope of powers - limitations and safeguards

RECOGNITION OF APPOINTMENT OF FOREIGN RECEIVERS IN GUERNSEY AND JERSEY

- *In the matter of Battoo et al, and in the matter of an application by Robb Evans Associates LLC*, 23 December 2013, Royal Court, Unreported Judgment 36/2013
 - Approval of “sufficient connection test” in *Terry* and *Ablyazov*
 - Common Channel Islands approach
 - Extension of circumstances giving rise to sufficient connection?
- *In the matter of Battoo et al*, 31 March 2014, Court of Appeal, Unreported Judgment 15/2014
 - Acceptance of Dicey & Morris categories of circumstances
 - But some reservations!
- *In the matter of the Representation of Palmerstone Estates Limited* [2016] JRC066

ISSUES TO CONSIDER

- Guernsey and Jersey Courts have inherent jurisdiction to recognise foreign receivers appointments:
 - Is the “sufficient connection” test satisfied?
 - Is there a penal element to be wary of?
 - Recognition remains at Court’s discretion
 - Scope of powers sought to be recognised – are they too wide?

FORUM ISSUES IN OFFSHORE COMPANY DISPUTES

DEVELOPMENTS IN BVI AND CAYMAN ISLANDS

Presented by Richard Brown

OFFSHORE COMPANY DISPUTES: OVERVIEW

- Company claims in BVI/Cayman:
 - Unfair prejudice (BVI only)
 - Derivative actions
 - Just and equitable winding up
 - Rectification
- Inherent jurisdictional tension – location of:
 - Shareholders
 - Assets
 - Business
- Contract vs constitution

DERIVATIVE CLAIMS

- Must start in BVI or Cayman, wherever the substantive claim is to be brought
- BVI companies:
 - Novatrust Ltd v Kea Investments Ltd and others [2014] EWHC 4061 (Ch) (England)
 - Microsoft v Vadem (Delaware)
 - Vaughn v. LJ International Inc (California)
 - Wong Ming Bun v Wang Ming Fan (Hong Kong)
- Cayman companies:
 - Davis v Scottish Re Group Ltd (New York)
 - Jurisdiction of Cayman Court to grant leave in respect of foreign derivative actions?

JUST AND EQUITABLE WINDING UP

- When can the Court's jurisdiction be ousted?
- Re Yung Kee Holdings Limited (FACV No. 4 of 2015): shareholders petition is a contractual dispute between shareholders
- Re Spartan Capital Limited (BVI Commercial Court, unreported): Shareholder's right to apply to wind up derived from the articles of association, not from the SHA – “separate and distinct” rights

ARBITRATION, UNFAIR PREJUDICE AND WINDING UP

- *Fulham Football Club (1987) Ltd v Richards* [2012]: J&E petition arbitrable
- *Ennio Zanotti v Interlog Finance Corp and ors*: breach of public policy?
- *C-Mobile Services Ltd v Huawei Technologies Co Ltd; Jinpeng Group Ltd v Peak Hotels and Resorts Ltd* – creditor’s petition: no need to show exceptional circumstances to engage winding up jurisdiction
- *Anzen Limited and ors v Hermes One Limited* [2016] UKPC 1: turning of the tide?

QUESTIONS?

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