Neutral Citation Number: [2024] EWHC 3255 (Ch)

Case No: CR-2024-001433

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY APPEALS
ON APPEAL FROM THE COUNTY COURT AT CENTRAL LONDON

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

Date: 20/12/2024

Before :

MR JUSTICE ADAM JOHNSON

- -

IN THE MATTER OF PRUDENCIA LLP

Between:

A and B	**Appellants**
- and –	
THE REGISTRAR OF COMPANIES	**Respondent**

- -
- -

Clive Wolman (instructed by **Bower Cotton Hamilton**) for the **Appellants**
The Respondent was not represented and did not appear

Hearing dates: 19 and 20 November 2024

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Approved Judgment

This judgment was handed down at 10am on Friday 20 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE ADAM JOHNSON

Mr Justice Adam Johnson:

The Judgment and the Appeal

1. This is an appeal by persons I shall refer to as A and B, who seek to overturn an Order made by District Judge Hart ("*the Judge*"), refusing their application to restore to the Register of Companies a limited liability partnership, Prudencia LLP ("*the LLP*"), which was dissolved on 7 March 2017, following a members' voluntary liquidation. That application was made under s. 1029 Companies Act 2006 ("*CA 2006*"), as modified in the case of an LLP by the LLPs (Application of Companies Act 2006) Regulations 2009 (SI/2009/1804), Reg. 57. (Generally in what follows, references to provisions of the Companies Act are to such provisions as modified by the 2009 Regulations).

2. A and B (natural persons rather than bodies corporate) both claimed standing to seek the restoration of the LLP to the Register. There were issues as to their standing, as I will explain below. As I read it, however, the critical finding by the Judge was not so much about the question of standing, but about the fact that there was no member of the LLP presently in existence (Judgment at [18]). That being so, the Judge considered there was no purpose in making any order for restoration.

3. The Judge's logic was along the following lines. At the time of the LLP's dissolution in March 2017, Companies House Records show it as having two members, both of them Cypriot companies.

4. I will refer to the first of them as "*Company X*", which owned a 95.04% interest in the assets of the LLP. A had been the sole beneficial owner of Company X, the shares of which were held by a nominee company for A's benefit. The issue here though was that some months before the dissolution of the LLP, in December 2016, Company X had itself been dissolved as a result of a process under Cypriot law known as "*dissolution by merger*", pursuant to which its property was absorbed into another Cypriot company also beneficially owned by A, namely Company Y. There was a question whether Company Y had therefore ever become a member of the LLP. The Judge thought not (Judgment at [13]), because whatever had happened under the law of Cyprus, Company Y had never agreed in writing, in a form approved by the Members, to become a party to the partnership agreement governing the affairs of the LLP ("*the Partnership Agreement*"), which Clause 12.2 of the Partnership Agreement required.

5. There was also another problem, namely that Company Y had itself been voluntarily liquidated and dissolved in 2021. It appears it cannot be restored to the register because, although the law of Cyprus allows restoration, the application for restoration must be made within two years of the date of dissolution, and so it is now too late (Companies Law of Cyprus, s.326). So whether the correct member of the LLP was Company X or Company Y, by the time the Judge came to consider the matter, neither was any longer in existence and neither could be restored.

6. As to the other company shown as a member of the LLP at the time of its dissolution, I will refer to that as Company Z. Company Z owned a 4.96% interest in the assets of the LLP as at the date of its dissolution. A's evidence was that Company Z's rights as member of the LLP were held for him by a Cypriot nominee company under the terms of a written trust instrument.

7. The position as regards Company Z, however, was the same as that of Company Y, because Company Z had *also* been dissolved in Cyprus after a members' voluntary liquidation in December 2018 – a year or so after the dissolution of the LLP in March 2017. So on the Judge's analysis, neither did Company Z provide an answer: even if it was clear that Company Z had been a member of the LLP in March 2017, it was no longer in existence, and it was (and is) too late to apply to restore it.

8. The Judge also considered the position of B. The issue for the Judge there, however, was that although B been a member of the LLP in his own right, he had "*ceased to be one as long ago as 2011*", and thus he did not "*have a status*" which would enable him to "*become involved in the management of or affairs of the company [i.e., the LLP]*" after any restoration (Judgment at [16]).

9. The Judge summed up the position at [17], when she said:

> "*The reality is, therefore, that if the LLP were to be restored, there would be no existing member who would be able to liaise with the liquidator that the claimants would wish to see appointed*."

10. At [18], the Judge then said:

> *" … unfortunately, in this instance, there are simply no members in existence. For that reason, there is no need to go on to consider whether either of the claimants [A or B] are 'persons interested' under s.1029(2) CA 2006 because there is no purpose in making an order for restoration and, accordingly, the claim is dismissed."*

11. By leave of the Judge, A and B now seek to appeal the Judge's Order dismissing their application.

Some brief background

12. A and B say in their evidence that they wish the LLP to be restored in order to pursue legal claims, arising from a settlement agreement entered into by the LLP in late 2012. The basic allegation is that the settlement agreement was procured by misrepresentations which, had they not been made, would have resulted in the settlement being on more generous terms as far as the LLP was concerned. This is said to entitle to the LLP to relief, although the precise nature of such relief is not spelled out. At any rate, the basic complaint is that the LLP would have made better returns than it did from late 2012 onwards, had the settlement agreement not been entered into, or not entered into on the terms in fact concluded. A and B wish to have the LLP resurrected, and have a liquidator appointed, in order to seek recoveries accordingly. Their position in their evidence is that they did not become aware of the alleged misrepresentations until late 2019, and before that the misrepresentations had been concealed from them.

Discussion

13. The decision on this appeal is whether the Judge was correct to dismiss the Appellants' application as a threshold matter, on the basis that the LLP had no members in existence, and therefore there was no purpose in proceeding with its restoration.

14. To start with, I think the Judge's reasoning was really that none of the members (or possible) members of the LLP *at the time of its dissolution* was still in existence – i.e., none of Company X, Company Y or Company Z. B *was* still in existence: the problem with him was that he had been a member only historically, and so as the Judge put it, he did not have any relevant "*status which enables him to become involved in the management or affairs of the company*" (see above at [7]).

15. Mr Wolman has said that in analysing things this way, and in concentrating first on the role B might play in the management of any restored company, the Judge fell into error: she should first had looked at the question of standing, and if the Judge had done so, she would have concluded that B did have standing, whatever the position as regards Company X, Company Y or Company Z.

16. On this point I agree with Mr Wolman. The modified section 1029(2), as it applies to LLPs, sets out a list of the persons authorised to make an application for restoration to the register. They include, at s. 1029(2)(g), "*any former member of the LLP (or the personal representatives of such a person)*" (my emphasis added).

17. Mr Wolman makes the point that in this case, although it is true he ceased to be a member on 3 December 2011, B must fall within the description, "*any former member of the LLP*" in s. 1029(2)(g). I think that is correct. The language of s. 1029(2)(g) is not subject to any temporal limitation: it does not say, "*any former member of the LLP at the time of its dissolution*". That is in contrast to the very next instance given, in s. 1029(2)(h), which applies to "*any person who was a creditor of the LLP at the time of its striking off or dissolution*" (my emphasis). The lack of any similar limitation in the language of the immediately preceding provision, must mean that the omission was deliberate, and so it must be correct to construe s. 1029(2)(g) broadly, so as to include any former member, whenever they ceased to be a member. I think there is another reason why logically *former* members should have standing. The Partnership Deed in this case (and I am sure many others will say the same) provides for the members to share in the profits of the LLP up until their "*Leaving Date*" (as defined). As a matter of principle, it makes sense to say that a former partner whose "*Leaving Date*" was at some point before dissolution, should nonetheless have standing to seek restoration, because such a person might nonetheless have a legitimate interest in procuring increased returns to the LLP during the period of his membership, albeit that it came to an end before the dissolution happened.

18. I therefore conclude that B does have standing to seek restoration of the LLP, even though only a former member whose membership came to an end in December 2011.

19. Once the matter of standing has been addressed, the Court is then faced with a more general inquiry. As to this, s.1031(1) CA 2006 sets out the circumstances in which the Court may order the restoration of the LLP on an application under s. 1029. Certain specific cases are given (s.1031(1)(a)-(b)), followed by the general words, "*if in any other case the Court considers it just to do so*."

20. By section 1032(1), the general effect of an order for restoration is that the LLP is deemed to continue in existence as it if had not been dissolved or struck off the register. Section 1032(3) then provides:

> *"The court may give such directions and make such provisions as seems just for placing the LLP and all other persons in the same position (as nearly as may be) as if the LLP had not been dissolved or struck off the register".*

21. Mr Wolman's point here is that the Judge failed to appreciate the width of the discretion conferred by ss. 1031 and 1032, to act justly and to give whatever directions seem appropriate, and that it is possible to fashion directions or provisions which address the Judge's central concern that there was no member of the LLP currently in existence. In particular, Mr Wolman said that putting "*all other persons in the same position (as nearly as may be) as if the LLP had not been struck off*" could include providing that A be treated as a member – that was as close as one could get ("*as nearly as may be*") to giving effect to his former ownership interests held via Company Y and Company Z, given that they have now been dissolved with no hope themselves of being restored to the register of companies in Cyprus.

22. On this general question of whether it is just, I would analyse things in the following way.

23. A good starting point is to consider the relevant statutory purpose. This is illustrated by Re Oakleague Ltd [1995] BCC 921. There, an application was made to restore to the register a dissolved company, whose liquidator prior to dissolution had assigned to the company's former director a cause of action against a third party supplier. In proceedings against the supplier, certain technical points arose about the validity of the assignment. On one view of it, the alleged deficiencies would be resolved by restoring the company to the register and joining it as a party. On other permutations, however, such restoration would make no difference to the outcome and so would probably serve no useful purpose (see p. 923H). An application for restoration was opposed by the supplier, but allowed by the Court. Robert Walker J concluded that it was not part of the test for restoration for the Court to need to be satisfied that the restoration would actually do some good or not (p. 924H). The Court only had to be satisfied that restoration would serve the general purpose of the legislation, which Hoffmann LJ had summarised in an earlier decision, Stanhope Pension Trust Ltd v. Registrar of Companies [1994] BCC 84 at p. 87D, as follows:

> "*I think it would therefore be nowadays more accurate to say that ordinarily the purposes of s. 651 are either to enable the liquidator to distribute an overlooked asset or a creditor to make a claim which he has not previously made*."

24. Robert Walker J described this as a "*very useful and accurate statement*" of the statutory purpose. At p. 924H, he summarised the position as follows:

> *"As often occurs in cases of this sort the restoration of the company to the register may do it some good or it may not. The attitude of the Companies Court is that provided the application for restoration falls within the general legislative purpose as I*

> *have described it the company will be restored, and whether the restoration does anyone any good or not is a matter to be decided by another tribunal in the future …".*

25. Applying that logic here, I think the LLP should be restored to the register. That is because, on the present evidence at any rate, there appears to be an overlooked asset, namely the potential claim for misrepresentation concerning the settlement agreement, which may generate returns for distribution. Restoration to the register is thus consistent with the relevant statutory purpose and, applying the language of s. 1031(1)(c), it is just to order it. Granted, there are many uncertainties, and it is far from clear that ultimately there will be any point in doing so; but the Court cannot resolve such matters at this stage, and they should be left for consideration by other tribunals in the future, to the extent necessary.

26. I will expand a little on what I mean.

27. One source of uncertainty concerns the potential claims for misrepresentation which the Appellants say should be brought by the LLP. Only limited information is presently available although, as I have said, the Appellants' evidence is that certain important matters relevant to the terms of the settlement were not disclosed to them at the time, and came to be revealed only some years later. The Court has no way of testing such propositions, however. They are the paradigm of matters which will need to be considered by another tribunal on another day.

28. Another issue concerns the Appellants' interest in any recoveries. To start with B, I am not at all clear that he has any such interest himself, because he retired as a member roughly a year before the contested settlement agreement was entered into. So I do not see how he will have an interest in further recoveries by the restored LLP, arising in respect of periods after he ceased to have any entitlement to share in its profits.

29. The position of A is different, however, and although there are some obvious problems, in my opinion he has shown enough on the evidence to justify restoring the LLP as a threshold step, leaving the problems to be finally resolved in the future to the extent necessary.

30. As to what those problems are, in one way or another they all relate to the fact that A's interests in the LLP were all held indirectly (via Companies X, Y and Z), none of which is any longer in existence.

31. Let me first take the position of Company Y, which received its interest by means of the dissolution by merger of Company X which took place in late 2016 (see above at [4]). In fact there are two issues here. The first is whether Company Y ever in fact became a member of the LLP by means of the process of "*dissolution by merger*" I have described; and the second is the fact that Company Y, even if it did become a member, is no longer in existence and there is no hope of it being restored.

32. Taking those points in turn, I respectfully consider that the Judge took too pessimistic a view of the effects of the "*dissolution by merger*" process in Cyprus. (Judgment at [13]). Her view was that whatever had happened in Cyprus, it could not result in Company Y becoming a member of the LLP, because Company Y did not execute any agreement to be bound by the terms of the English law Partnership Agreement, as

required under Clause 12.2 of that Agreement ("*No person may become a Member until he has agreed in writing, in a form approved by the Members, to become a party to this agreement (as amended) and be bound by its terms"*).

33. In reaching that conclusion, however, I think that the Judge did not fully appreciate the full effect of the Cypriot law process. According to the expert evidence on Cyprus law, that process was in the form of a transfer by way of universal succession. That seems clear from the main provision of Cyprus law relied on, namely section 200(2) of Cap. 113, which provides as follows:

> "*Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company …* "

34. A transfer by way of universal succession will be recognised in England such that the amalgamated company (here, Company Y) will be regarded as having succeeded to the assets and liabilities of its predecessor (here, Company X), without more (see *Dicey, Morris & Collins*, The Conflict of Laws (16th Edn.), at 30-013). Such liabilities would here include, it seems to me, the obligations formerly owed by Company X as a member of the LLP under the Partnership Agreement. If that is correct, then the formalities for acquiring membership under Clause 12.2 of the Partnership Agreement did not need to be complied with. And in any event, as Mr Wolman pointed out in argument, the circumstances strongly suggest that there *was* an agreement that Company Y become a member, given that the only entities relevant to any such agreement (Company X, Company Y and Company Z) were all ultimately controlled by the same person, A, and that is undoubtedly what he wanted to happen.

35. There is then the fact that Company Y, even if a member of the LLP at the time of its dissolution in March 2017, was itself dissolved in 2021. Who, then, should a liquidator make distributions to, if additional recoveries are made? The Partnership Agreement authorises distributions to the "*Members*", as defined, but A was not a "*Member*" in that sense. Here again, though, the evidence of Cypriot law provides a possible answer. The analysis suggested is that if at the time of Company Y's dissolution it had contingent rights as a member of the LLP which the LLP knew nothing about and had done nothing to realise (such as the right to receive additional distributions on the successful prosecution of a claim for misrepresentation), then because A was the ultimate beneficial owner of Company Y, such rights vested in him on dissolution as a matter of Cypriot law, rather than being transferred to the Republic of Cyprus by way of *bona vacantia*.

36. Turning then to Company Z, it is said that exactly the same logic applies. The evidence is that the membership rights in the LLP registered in the name of Company Z were in fact held by an intermediary on trust for A. The Cypriot law evidence is that consequently, any residual or contingent rights of Company Z as member at the time of its dissolution vested in A as beneficial owner, rather than passing as *bona vacantia*; and such rights thus subsist for the benefit of A, notwithstanding the dissolution of Company Z.

37. Pausing there, it seems to me that this analysis as it applies to both Companies appears entirely plausible. To be clear, I do not decide it is definitively correct, only that it is sufficiently persuasive to justify an order for restoration. Its overall legitimacy, and its precise practical effects (does it entitle A to be regarded as a member of the LLP, or as a creditor, or as neither?) can be worked out later, if necessary on further applications to the Court by the liquidator, by A, or by other interested parties. I think it is enough for now to say that justice requires the process to be allowed to unfold and not stopped in its tracks.

38. I am fortified in that view by matters referred to by Mr Wolman in argument, in particular his point that the certain parts of the legislative scheme relevant to LLPs encourage an expansive and realistic view of the ownership of membership rights, which goes beyond looking at the name shown on the register. For example, the Limited Liability Partnerships (Accounts and Audit) (Application of the Companies Act 2006) Regulations 2008 (SI 2008/1911), in dealing with the concept of parent and subsidiary undertakings, provide by means of an amended s. 1162 Companies Act 2006 and Schedule 7, that "*Rights held by a person in a fiduciary capacity shall be treated as not held by him*" (Sch. 7, para. 6), and "*Rights held by a person as nominee for another shall be treated as held by the other*" (Sch. 7, para. 7(1)). The parallel with the present case may not be an exact one, but I accept that these provisions suggest a degree of elasticity in the statutory scheme when it comes to identifying who is the true owner of membership rights and entitlements.

39. Finally, what of the point the Judge appears to have found most persuasive, namely the practical issue referenced in para. [17] of her Judgment that "*there would be no existing member who would be able to liaise with the liquidator"*? Here, I think Mr Wolman is correct that the language of s.1032(3) provides the flexibility required to fashion an appropriate response (i.e., the power to give such directions or make such provisions as seem just for placing the LLP or "*all other persons in the same position (as nearly as may be) as if the LLP had not been struck off*"). Given the conclusions I have reached above as to the ongoing interests of A in realising the contingent value represented by the LLP's prospective claim, it seems to me appropriate to direct that he should be entitled to liaise with the liquidator as regards the bringing of that claim. Given that the entities via whom his interests were held are no longer in existence, the effect will be to put him "*as nearly as may be*" in the same position he was in at the point of dissolution. It is impossible to restore the actual *status quo ante*; but that is the next best thing, and in my view the statutory language is sufficiently flexible to allow it to happen.

Conclusion and Disposition

40. For all those reasons, I would allow the appeal, and order the LLP to be restored to the register on terms reflecting the directions set out above.

Form of Judgment

41. The hearing of this Appeal has taken place in private, pursuant to an Order made by ICCJ Barber dated 17 July 2024. In accordance with CPR, rule 39.2(4) I have also been asked to anonymise this Judgment, so as to delete references to the names of the Appellants, and of their associated companies. I have determined to do so since in my opinion that is necessary to secure the proper administration of justice and in order to

"*protect the interests of any person*". The need arises because the Appellants have produced credible evidence that their family members, who reside abroad, may become the target of reprisals in their country of residence, if the Appellants' intention to pursue claims via the LLP becomes known. In such circumstances, the Appellants wish to be able to inform their family members of their plans, to give them the option to relocate or take such other steps as they may feel appropriate to protect their interests.

42. In light of such matters, I will direct that this Judgment be published but should remain in an anonymised form until either the proposed claim is initiated by the LLP, or 30 June 2025 (whichever is the later). In my view that limitation is justified in circumstances where: (1) there is evidence of potential harm to identifiable third parties; (2) the Respondent to the present application is the Registrar of Companies, who has been notified of this application but has chosen not to appear and has made no objection to it; and (3) the only parties who might be adversely affected are the defendants to the prospective claim by the LLP, but they will have to be notified of that claim in due course and at that stage can defend it and/or seek whatever Orders in the ongoing liquidation of the restored LLP they think fit, in order to challenge the ability of the LLP to bring it.