

ROYAL COURT

9th September, 1994

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Before: The Judicial Greffier

In the matter of the Representation of Petrotrade Inc

<u>Between:</u>	Petrotrade Inc	<u>Representor</u>
<u>And:</u>	Channel Islands and International Law Trust Co. Limited	<u>First Respondent</u>
<u>And:</u>	David St. Clair Morgan	<u>Second Respondent</u>

Applications:-

- (a) by the Respondents, for striking out the representation on the grounds that it discloses no reasonable cause of action;
- (b) by the Respondents, for a stay pending the outcome of the appeal of the Respondents against the decision of the Royal Court dated 8th April, 1994; and
- (c) by the Representor, for the Representation to be treated as a *cause de brièveté* or alternatively for the Representation to be set down on the hearing list and for directions to be given as to pleadings, discovery, etc.

Advocate T.J. Le Cocq for the Representor.  
 Advocate P.C. Sinel for the Respondents.

JUDGMENT

JUDICIAL GREFFIER: On 8th April, 1994, the Representor presented a Representation to the Royal Court in relation to Independent Maritime Services Limited (hereinafter referred to as "the Company"). The Company had been placed into a members voluntary liquidation and was subsequently dissolved on 29th September, 1993. The Second Respondent was appointed as liquidator of the Company. The Second Respondent is a director and employee of the First Respondent. The Representor is a Cayman Islands Company

which carries on business as a trader in crude oil and refined petroleum products. The Representation alleges that one Clive Stafford Smith (hereinafter referred to as "Mr. Smith") was employed by a company known as International Maritime Services Co Limited and subsequently by a company known as E.P. Services S.A. and that in this capacity he was responsible for negotiating through shipbrokers the chartering of vessels required by the Representor. The Representation contains allegations that Mr. Smith obtained monies by way of port agent's commissions and address commissions which ought to have been received by the Representor or which were received by Mr. Smith in circumstances which made him liable to account for them to the Representor and that the Company may have been used to receive such commissions due to, *inter alia*, Mr. Smith and which otherwise belonged to Petrotrade.

The prayer of the Representation sought orders:-

- (1) that the dissolution of the Company be declared void;
- (2) that the Second Respondent be removed as liquidator;
- (3) that one William Perchard of Coopers & Lybrand be appointed as liquidator of the Company and given certain directions; and
- (4) such as the Court shall see fit.

When the matter first came before the Royal Court on 8th April, 1994, the Royal Court, prior to the Respondents having been convened, declared, pursuant to Article 213 of the Companies (Jersey) Law 1991, the dissolution of the Company to have been void and ordered that the Company be reinstated. The Respondents have subsequently appealed against that decision but the Court of Appeal has not yet heard this appeal.

On 29th July, 1994, I heard the Respondents' summons dated 22nd July, 1994. The first paragraph of that summons related to an application to strike out the Representation on the grounds that it discloses no reasonable cause of action. The second paragraph of that summons contained an application that the Representation be stayed pending the outcome of the appeal against the decision of 8th April, 1994.

Both parties were agreed that the effect of the Order of 8th April, 1994, had been to reinstate the Company with the Second Respondent as the liquidator thereof.

Advocate Sinel, for the Respondents, submitted that the Representation did not disclose a proprietary or pecuniary claim against the Company and that, therefore, the Court would not have jurisdiction to make the Orders sought as Petrotrade had no *locus*

standi either under a claim against the Company or otherwise. Advocate Sinel also submitted that the Court would not have the power to remove the liquidator in such circumstances and that even if the Court did have such power, the liquidator had not acted improperly and the Representor was seeking to bring in a "puppet liquidator" in order to assist the Representor in bringing a claim against the Company.

Advocate Le Cocq, for the Representor, submitted that the Representation was not a fully pleaded claim because it was an application seeking certain relief under the Jersey Companies Law. He submitted that the obligation on the Representation was simply to show that there was reason why the Second Respondent should not continue to be the liquidator of the Company.

Advocate Le Cocq drew my attention to the case in re Zaki Limited (1987-88) JLR 244, and in particular to the following paragraph on page 246:

*"There was no other formal time limit on his appointment and, although the court had an inherent jurisdiction to remove a liquidator if there were sound reasons for doing so, and to appoint a new liquidator to complete his work, no such reason had been shown here."*

That case is clear authority for the Court's having an inherent jurisdiction to remove a liquidator.

Advocate Le Cocq also drew my attention to the case of Hotel Beau Rivage Company Limited v. Careves Investments Limited (1985-86) JLR 70 where at page 71 he drew my attention to part of paragraph (2) of the Summary of the Court's decision and to the following words:

*"(a) the court was satisfied that the liquidator was independent."*

In the same paragraph of the same quotation Advocate Le Cocq drew my attention to the following words:

*"(c) it did not matter that the liquidator was not as such an officer of the court since, even if his principal duty was to the shareholders, he was still obliged to investigate all the assets of the defendant including claims against its parent company, in respect of which he had power to commence proceedings; and in any case the court would always control any improper behaviour or neglect of duty on the part of the liquidator."*

In that case, the Court in paragraph (3) of the Summary ordered the liquidator to investigate the claims against the

parent company and to report to the Court; and ordered the parent company to supply the liquidator with all necessary information.

5 Advocate Le Cocq submitted that this was authority for the Court's having the power to instruct the liquidator as to how he should conduct the liquidation. He submitted that the third paragraph of the prayer of the Representation was seeking to do precisely this in relation to a new liquidator.

10 Advocate Le Cocq drew my attention to the case of Cooper v. Resch (1987-88) JLR 428 where at pages 432 and 433 was a section quoting from the White Book as follows:

15 *"It is only in plain and obvious cases that recourse should be had to the summary process under this rule...."*

20 *The summary procedure under this rule can only be adopted when it can be clearly seen that a claim or answer is on the face of it obviously unsustainable...."*

In this case I simply had to ask myself the question, "is the Representor's Representation obviously unsustainable?"

25 In my view, the Representation is not obviously unsustainable. The Representation indicates that monies which have wrongly been obtained by Mr. Smith may have been passed through the Company and that, if that is so, there would be a right of action against the Company. Furthermore, the involvement  
30 of the Second Respondent in relation to the administration of the Company is such that the Royal Court may well find that the liquidator, in this case, is not sufficiently independent and should therefore be removed from office.

35 I am also bound to give some weight to the fact that the Royal Court, on 8th April, 1994, made an Order reinstating the Company. If the Royal Court had thought the Representation obviously unsustainable then it would not have done this.

40 Accordingly, I dismissed the application for striking out on the ground that the Representation disclosed no reasonable cause of action and ordered that the First and Second Respondents pay the costs of and incidental to that application, in any event.

45 Advocate Sinel, on behalf of the Respondents, then went on to make an application for the Representation to be stayed pending the appeal against the decision of 8th April, 1994. He submitted that if the appeal were successful then the Representation would fail. If the Company were not reinstated then there would be no  
50 liquidator to remove. Advocate Sinel indicated that the appeal might be heard in September.

Advocate Le Cocq pointed out that the application for a stay was not supported by an affidavit. He submitted that the Respondents had not moved expeditiously. They had filed the necessary appeal on 6th May, 1994 but had not yet filed their Appellant's case. The only prejudice, in his submission, to the Respondents would be in costs and if the appeal were successful and the whole of the Representation effectively, therefore, failed then the Respondents could be compensated in costs..

He drew my attention to the case of Stanhope Pension Trust Ltd and another v. Registrar of Companies and another [1994] BCLC 628. That related to an application to restore a dissolved company. At the bottom of page 635 of that Judgment there commences the following section:

*"The making of the order does not determine whether the applicant has a claim against the company or the company has a claim against a third party. As I have already said, all that is required is that the claim should not be merely shadowy. It therefore seems to me that a third party who merely wants to say that the applicant has no claim against the company or that the proceedings which the revived company proposes to bring against him have no prospect of success should not be entitled to intervene in the application."*

In this case, in my view, the potential claim of the Representor against the Company is much more than shadowy. Accordingly, it seems to me to be unlikely that the appeal will succeed. Taking into account all the relevant factors I therefore exercised my discretion against the Respondents and refused the application for a stay.

Subsequently, on 8th August, 1994 I heard a Summons on behalf of the Representor which was effectively seeking an Order that the Representation be heard at an early date, that the Representation be set down on the hearing list, and that further directions be given as to pleadings, discovery, etc.

Rule 6/21(2) of the Royal Court Rules, 1992, as amended, reads as follows:

*"(2) On any application under this Rule, the Greffier shall, if he is satisfied that the action is ready for trial or hearing, make any order that he deems appropriate for sending the case to proof or for determining the issues to be tried, set it down on the hearing list and notify every party to the action that he has does do."*

5 The test which I must therefore apply in relation to setting  
down is simply the test as to whether I am satisfied that the  
action is ready for trial or hearing. In this case, that is  
whether the Representation is ready for trial or hearing. At the  
10 hearing on 29th July, 1994, the Respondents, having failed to  
strike out the whole of the Representation, had sought to strike  
out various parts thereof and I had refused to do this. Although  
the Representation might be pleaded more eloquently, I have come  
to the conclusion that it was adequate for its purpose. The  
15 Respondents had filed an Answer to the Representation which was  
also adequate. On 8th August, 1994, I was of the opinion that the  
Representation should be set down as it was ready for hearing.

15 Advocate Sinel urged me to make no Order for discovery. He  
alleged that discovery, in this case, would operate as a fishing  
exercise. He also stated that it was difficult to determine what  
were the matters in issue in such a case.

20 In the case of an application for the removal of a liquidator  
the pleadings are bound, of necessity, to be somewhat looser and  
more general than they would be in relation to a normal action.  
However, in my view, the main issues are clear and are as  
follows:-

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- (1) does the Representor have a proper basis upon which to bring  
the matter before the Court;
  - (2) should the existing liquidator be removed;
  - 30 (3) should the Court appoint the proposed new liquidator; and
  - (4) should the Court give directions to any new liquidator?

35 It appeared to me to be obvious that the Respondents would be  
seeking to allege that the Representor had no proper claim against  
the Company. If this were so then this would obviously raise  
issues of fact in relation to which discovery ought to take place.

40 I could see no reason why discovery should not take place in  
relation to the matters in issue in the Representation and  
accordingly I so ordered.

Authorities

Companies (Jersey) Law 1991: Article 213.

*in re* Zaki Ltd (1987-88) JLR 244.

Hotel Beau Rivage Co Ltd -v- Careves Investments Ltd (1985-86)  
JLR 70.

Cooper -v- Resch (1987-88) JLR 428.

Stanhope Pension Trust Ltd & Anor -v- Registrar of Companies &  
Anor (1994) BCLC 628.

Royal Court Rules, 1992: Rule 6/21(2).