

ROYAL COURT  
(Samedi Division)

216B.

27th October, 1994

Before: The Bailiff, and  
Jurats Gruchy and Bonn

In the matter of Office Supplies Limited in liquidation.

Representation of John Heath & Co Ltd;  
Wiggins Teape Ltd; Acco-Rexel Ltd;  
Spicers Ltd; John Dickinson Stationery;  
British Loose Leaf Manufacturing;  
Maars API Ltd; Babs International Ltd;  
Nashcopy (CI) Ltd; KWL Advertising  
(Guernsey) Ltd; and Don Filleul

First Representors

Representation of Michael Voisin & Co;  
Barclays Bank Plc; Shalamar Ltd;  
Richard Jepson Egglshaw; Strachans;  
and Melbourne Garage Ltd

Second Representors

Advocate M.M.G. Voisin for the First Representors.  
Advocate J.D. Melia for the Second Representors.

JUDGMENT

THE BAILIFF: This matter arises from a representation presented by a number of creditors of a Jersey Company known as Office Supplies Ltd, which first came before the Court on 5th October, 1994. That Company was in difficulties (and still is) and on 28th September, at the Town Hall, there was a meeting of creditors. There, a Mr. David J. Picot was appointed liquidator. The matter of the appointment of Mr. P.W.J. Hartigan FCCA of Messrs. Booth White, 142-148 Main Road, Sidcup, Kent, England, an experienced administrator in insolvency, was also canvassed but on a vote Mr. Picot was appointed liquidator. Unfortunately on the following day, due to a conflict of interest which was not apparent at the time, he informed Mr. Blandford-Baker, who was an associate or partner of Mr. Hartigan, that he could not act. Accordingly, on 5th October, a number of creditors, the First Representors, made a representation to the Court asking that Mr. Hartigan be appointed as liquidator.

Because that matter had been presented to the Court *ex parte* the Court felt itself unable to agree at that sitting and postponed the matter until 21st October, although it appointed Mr. Hartigan liquidator *pro tem* pending further Order of the Court.

The Court also ordered that the creditors who had made the representation should write to the other creditors of the company, advising them of the order that the Court had made and should also insert a notice in the "Jersey Gazette" to similar effect.

The matter came up on 21st October, but was not dealt with and hence we have been sitting to deal with it this afternoon.

We have had before us two main affidavits which we have been taken through very carefully by each counsel; one by Mr. Blandford-Baker, and one by Mr. Egglishaw.

In Mr. Blandford-Baker's affidavit there are a number of allegations, which have been strenuously denied by Mr. Egglishaw in his affidavit, indicating there were certainly some strange - putting it no higher than that - financial dealings during the latter part of the operation of the company. We say no more about it; that is a matter to be investigated by the liquidator in more detail in due course.

There is another representation before us on the part of another group of creditors, the Second Representors, asking the Court not to continue with Mr. Hartigan's appointment, but to appoint two accountants from a Jersey firm. The amount due to the creditors in respect of each application is roughly, at the moment, two to one, that is to say on behalf of the representors who appeared before the Court previously approximately £300,000 and on behalf of those who oppose Mr. Hartigan and wish to have a Jersey firm appointed, just over £600,000.

However, we have noted and been informed today that, following the earlier hearing, at least one considerable creditor has changed sides - if the Court may put it that way - in the sum of £200,000: Mr. Donald Filleul now supports the representors wishing Mr. Hartigan to continue in office.

We have had regard to a passage in the case of Re Falcon R J Developments Ltd (1987) BCLC 437, at the bottom of p.442, commenting on part of Hoffmann J's Judgment in an earlier case of Re Lowestoft Traffic Services Ltd [1986] BCLC 81 at 83-84, where Hoffmann J says on the question of a discretion:

*"One of these (the matters) must certainly be the number, value and quality of the creditors who favour a winding-up order as against those who do not. In this case the numbers are equal, but the quantity of the debts of those who favour a winding up is very considerably greater than*

5 those who do not. In addition, it is, I think, proper to discount the opposition of those opposing creditors who are clearly associated with the management of the company, particularly when, as in this case, it is said that the main reason why there should be an order for compulsory winding up is the necessity for an independent investigation into their management".

10 As against that, in the same Judgment at p.441, Vinelott J, refers to a passage from the Judgment of Diplock LJ in the case of Re J D Swain Ltd [1965] 2 All ER 671; [1969] 1 WLR 909 C.A. where he says at p.915 of the WLR report:

15 "... for the wishes of the petitioner to over-rule those of the majority of the creditors there must be some special reason".

And, again, at the top of p.442, Vinelott J, says:

20 "The court should not lightly overrule the views of those with the largest stake in the assets of the company as to whether the assets should be administered in the course of a compulsory or in the course of voluntary winding up".

25 Of course we do not have before us today the same arguments because it is not a case of whether there should be a voluntary or compulsory winding up but, really, as to who should be the liquidator.

30 It is true, as Mr. Voisin on behalf of those who oppose the appointment of Mr. Hartigan says, that the accountants whom his clients would like to have appointed are in fact Jersey based; the assets are in Jersey; the bulk of the evidence would be dealt with in Jersey. There is a subsidiary company in Guernsey which we need not go into, but Mr. Picot has been appointed there and it would be desirable to appoint somebody else - possibly the same liquidator - who should (according to Mr. Voisin) be local. Jersey Law would be applicable. The question of costs would be higher in the case of the English appointment. There is a question of taxation and possibly of some VAT, but we do not know how far that is likely to apply in a case of this nature as the company is clearly insolvent. The majority of the creditors, in the sense of those who have the greatest amount of debts owing, supported at the time Mr. Picot at the Town Hall meeting, but that has been reduced, as I say, by a figure of £200,000 in respect of Mr. Filleul. There would also be an inevitable delay, because of the travelling arrangements and so on. Lastly, Mr. Egglshaw - who was apparently the major controller in the defunct company - had invested something like one million pounds and that had gone badly wrong; he is unlikely to be benefited because his claim is considerably smaller. As to this, the assertion that Mr.

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Egglishaw had put in this amount of money was not sworn to in his affidavit.

5 So far as Jersey Law and the case Law are concerned, our company Law is modelled, but not entirely because it is much shorter, on the relevant English Company Acts and there is authority for saying in this Court that where that is the position then this Court and those practising in the Island (lawyers and accountants) have regard to the English authorities, and we can  
10 see no difficulty on that point.

15 Miss Melia, for the representors wishing Mr. Hartigan to be appointed, has stressed that his company is extremely experienced in matters of this sort. Secondly, it has already undertaken a certain amount of work which would have to be duplicated if a new liquidator, totally unversed in the affairs of the company, were to be appointed. Thirdly, Mr. Hartigan is not connected in any way with any of the creditors, whereas there is a thread of connection running through several of those opposing his  
20 appointment. As regards the costs, Miss Melia has conceded that the charging rate of Mr. Hartigan is higher because of his expertise, but that there would be an undertaking from him to delegate as much of the work as he could to someone else whose fees would not be as high.

25 Having looked at all the circumstances and without prejudging the allegations made in Mr. Blandford-Baker's affidavit which, as I have said, have been strenuously denied and in some respects refuted in detail by Mr. Egglishaw, nevertheless we feel that Mr. Hartigan has himself investigated certain matters; is now immersed in them; and is an experienced man. We do not feel the fact that he is operating in England should be a bar; as Miss Melia has said, telephone, faxes and other means of quick communication are there; it is more office-based work than a  
30 'hands on', on the spot task, which would require a great deal of detailed personal investigation; and we have come to the conclusion that we consider it would not be right for us not to make an order because if we did not make the order then at a subsequent creditors' meeting which we understand is to be held next month it would be open to the creditors to overturn - in  
40 accordance with a Company Law here - Mr. Hartigan's appointment and appoint somebody else. That would clearly be unsatisfactory. We have complete discretion which would be exercised as we think in the interests of the creditors as a whole and we think that those interests would be better served if we make the order which  
45 we are now going to do.

50 Accordingly in the name of the Court, I order that Mr. Hartigan will be confirmed as the liquidator until further order of the Court. The costs of this afternoon's representation will be met by those who opposed it, that is to say, Mr. Voisin's clients, on an ordinary taxed costs basis.

## Authorities

Companies (Jersey) Law 1991: Article 161.

Companies Act 1948: s.346.

4 Halsbury 7(2): para 1479.

Palmer's Company Law (24th Ed'n) Vol 1: p.p.1368-1370; para  
2.514; para 15.119.

Gower's Principles of Modern Company Law (5th Ed'n): pp.761-762.

Re Falcon R J Developments Ltd (1987) BCLC 437.

Re Lowestoft Traffic Services, Ltd (1986) BCLC 81 at 83-84.

Re Swain (JD). Ltd (1965) 1 All ER 761; (1965) 1 WLR 909 at 915  
C.A.

Re Medisco Equipment Ltd (1983) BCLC 305.

In re TSB Bank Channel Islands Ltd (1992) JLR 160.