

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)**

SAINT VINCENT AND THE GRENADINES

Claim No. 2022/0013

IN THE MATTER OF TRENDX INVEST S.A.

AND

IN THE MATTER OF THE COMPANIES ACT, CHAPTER 143 OF THE LAWS OF
SAINT VINCENT AND THE GRENADINES REVISED EDITION 2009

AND

IN THE MATTER OF THE BUSINESS COMPANIES (AMENDMENT AND
CONSOLIDATION) ACT CHAPTER 149 OF THE LAWS OF SAINT VINCENT AND
THE GRENADINES REVISED EDITION 2009

BETWEEN:

VISTAJET LIMITED

Petitioner

and

TRENDX INVEST S.A.

Respondent

APPEARANCES:

G Graham Bollers of Regal Law Chambers for the applicant

2022: October 20;
November 11;
2023: January 13;

ORAL RULING WITH REASONS ON WRITTEN SUBMISSIONS

- [1] **STEPHENSON J.:** Before the court is an application¹ for the court's approval of the joint liquidators of Trendex Investments S.A. to draw down on a funding agreement entered with one of their creditors Vistajet Limited entered into and provided for pursuant to the interim order of court made on the 30th October 2020² and to charge fees³ in relation to the liquidation of the company. This application is supported by an affidavit sworn to by David Standish⁴ one of the joint liquidators on behalf of the liquidators who were appointed pursuant to an order of this court⁵.
- [2] The basis of the application is that the joint liquidators of Trendex Investments S. A. (The company) are not aware of any freely available assets in the name of, or belonging to the company which is available to fund the liquidation at hand.
- [3] It has been submitted by counsel for the liquidators Mr. G Graham Bollers supported by the averments made by Mr. David Standish that in the absence of funding the company's creditors are unlikely to recover any of the money owed to them by the company.
- [4] It has been further submitted by Counsel Bollers without the third-party funding that the liquidators will be unable to undertake any meaningful investigations of the company's affairs. Further, that entering into the funding agreement will enhance the prospects of the creditors being able to recover under a distribution from the company's liquidation.
- [5] In his affidavit sworn in support of the application at bar, Mr. Standish made reference to two other instances in St. Vincent and The Grenadines where he has sought and obtained similar orders from the court to wit:
- a. In the liquidation of Quarry Hill Investments Limited where the funding allowed the liquidator to recover funds that facilitated payments being made to the company's creditors; and
 - b. In the ongoing liquidation proceedings in SFX Global Limited where the approval of the funding agreement has allowed him to undertake significant investigation into the company's affairs.

¹Application filed on the 29th September 2022

² See paragraph 8(c) of the liquidation order

³ The liquidators' fees and the fees of the staff as stated in paragraph 2 of the affidavit of David John Standish mentioned below

⁴ Affidavit dated the 29th September 2022

⁵ Order of Buyer J dated the 28th April 2022

[6] Mr. Standish has further averred that the funding being sought will allow the joint liquidators to add value and offer the company's creditors the opportunity to seek redress against the company.

[7] Mr. Standish also averred that:

- a. Vistajet has agreed to pay the joint liquidators their reasonable costs, disbursements which are properly incurred in the liquidation; and
- b. That there is an agreed cap of GBP£20,000.

[8] Mr. Standish further informed this court as to the agreed hourly rate for work to be undertaken by the liquidators and their support staff which he stated were in line with the standard rates for the task at hand and which are competitive and fair.

[9] It is noted that the liquidator has stated his reasons for sourcing the funding which included the beneficial owner's lack of cooperation, absence of information regarding the company's funds and accounts, the paucity of company records and books and the "jurisdiction risks and uncertainties from the involvement and possible involvement of entities and individuals in numerous jurisdictions including St Vincent and The Grenadines, Switzerland, and Sweden."

[10] What is litigation funding? Litigation funding is the practice of using funds provided by a third-party funder to pursue litigation or as in the case at bar liquidation. Funds obtained under litigation funding cover the legal costs of the claim including counsel's fees, disbursements and generally the liquidator's costs.

[11] It is noted that the litigation funder so to speak in the case at bar has been named by the liquidator as a creditor of the company, is also the entity that is the petitioner in these proceedings and therefore, there is no doubt that the funder is related to the liquidation proceedings at bar and therefore the issue of whether or not the funding agreement is unlawful on the grounds of maintenance or champerty or whether the agreement has an inclination to cause concern regarding public justice does not really arise.

[12] The law and considerations on applications of this sort were considered by Justice Adrian Jack in the BVI case of **Russel Crumpler and David Standish as Joint Liquidators of Exential Investments In (in Liquidation) -v- Exential Investments Inc. (In Liquidation)**⁶

⁶ Claim NO. BVIHC9COM) 81 of 2020

[13] Counsel G Bollers in his written submissions pointed out to this court that funding by third parties of liquidation is "... in principle not prohibited as a matter of Saint Vincent and the Grenadines Law, provided that such arrangement does not fall foul of the rules of maintenance and champerty ..."⁷. It has been noted by this court that there is a paucity of written decisions available on the issue. However, it has also been noted that the courts in the Cayman Islands have endorsed and applied the approach adopted by the United Kingdom Courts where it has been held that the courts are concerned with "*the protection of the integrity of the litigation process*"⁸.

[14] It is noted that this case along with **A Company -v- A Funder**⁹ provide helpful guidance to the court in respect of the approach to be taken in applications such as in the case at bar. In fact, one commentator stated

'Third party litigation funders, once seen as "strangers to litigation" have recently been welcomed with open arms by the Grand Court. Departing from the historical common law offences of maintenance and champerty, the Grand Court has confirmed that commercial funding of litigation is not contrary to public policy. On the contrary third party litigation funding may promote access to justice and have a role to play in the modern justice system. In **A Company -v- A Funder** (Unreported 23 November 2017)¹⁰ Segal J noted that:

"Cayman has an important, world-class court system and litigation culture and there is no reason why responsible, properly regulated commercial litigation funding undertaken in accordance with the principles I have set out should not have a place in this jurisdiction".¹¹

[15] The fundamental principle which arises in these cases is that the court will not prohibit funding agreements provided that those agreements do not overall undermine the integrity of the litigation process. The court ought to also consider where there is any evidence of abuse of its process.

[16] In **A Company -v- A Funder**¹² the claimant applied to the court for a declaration that a third party funding agreement it had entered into was not

⁷ Submissions filed on behalf of the Liquidators/applicants on the 11th November 2022 at paragraph 7

⁸ In the matter of ICP Strategic Credit Income Fund Limited Grand Court of the Cayman Islands (Financial Services Division) Cause No. 82/269 of 2020, [2014] 2 CILR 1

⁹ FSD 68 of 2017

¹⁰ Cause No. FSD 68 of 2017 (NSJ), [2017] 2 CLR 710

¹¹ Article written by Ben Hobden, Partner and Spencer Vickers Associate of Conyers Dill and Pearman – Insights & Resources December 2017

¹² Op cit

illegal on the grounds of maintenance and champerty. The court found that as a matter of principle a funding agreement will not be unlawful by reason of maintenance and champerty if it does not tend to corrupt public justice.

[17] Segal J considered a number of issues regarding the funder which essentially spoke to whether or not the funder would have control of the proceedings or be able to manipulate the proceeding which would amount to abuse. It was held that provided that the funder respected important policy goals in terms of not manipulating the proceedings or taking actions that would amount to an abuse of process then commercial funding of litigation can promote access to justice and should not be objectionable or subject to enhanced requirements or constraints.

[18] The court held in this Caymanian case that the funding agreement would not be legal and would not offend the doctrines of maintenance and champerty, in fact it was found that there are *'clearly benefits that may flow from allowing the plaintiffs with genuine claims the opportunity to litigate them on terms which they consider to be commercially attractive and prove them with a better risk-reward ratio than if they were to fund the costs of the litigation themselves'*.

[19] Counsel on behalf of the applicants made submissions on whether or not the third-party funding agreement sought would offend the principles of maintenance and champerty. Maintenance has been defined as the giving of assistance or encouragement to a litigant by someone without an interest in the proceedings or any legally recognised motive.

[20] In the case at bar based on the averments of the liquidator Mr. Standish, VistaJet is a creditor of the company in liquidation and it is understood by this court would have an interest in the investigation and gathering in of the company's assets to recoup their interest as a creditor and is therefore a party with an interest to serve.

[21] Champerty has been described as a form of maintenance by which assistance is provided in consideration for a share of the proceeds. As stated by Jack J in the BVI case¹³ '... the rules of champerty, so far as they have survived are primarily concerned with the protection of the integrity of the litigation process in this jurisdiction'. The Learned Judge relied on the decision of **Papera Traders Co Ltd -v- Hyundai (Merchant) Marine Co Ltd No. 2**¹⁴

[22] As stated, before the funder has a legitimate interest in the liquidation in the case at bar and in this court's view the funder's actions cannot be viewed as 'wanton and officious intermeddling' or as an entity that has no interest in the

¹³ In the matter of Extential Investments Inc (In Liquidation)

¹⁴ [2002] EWHC 2130, [2002] 2 Lloyds Report 692

matter. There is no evidence as presented to the court that there is any intent to corrupt public justice.

[23] Justice Jack ¹⁵ also made mention of the final report of the Review of Civil Litigation Costs where Jackson LJ stated that he "remained of the view that the principle, third party funding is beneficial and should be supported".

[24] This court is satisfied on the balance of probabilities based on the averment of the liquidator that the liquidators would not be able to undertake a meaningful investigation into the company's affairs without the third party funding and that without the funding it would be unlikely that they could recover any money which is owed to the company's creditors including VistaJet. It is also clear that the funding arrangement as entered into and from which the liquidators seek to draw down is not contrary to law or public policy and is in fact necessary in the case at bar to ensure that the creditors of the company in liquidation have access to justice.

[25] Accordingly the application is granted as prayed in terms of the draft order as presented by counsel in the following terms:

- a. The joint liquidators of Trendex Invest SA (In liquidation) are permitted to draw down on the funding agreement dated 10th June 2022 between Vistajet Limited and the joint liquidators;
- b. The proposed hourly rates of the joint liquidators and their staff's time in relation to the liquidation of the company Trendex Invest SA (In Liquidation) is hereby approved;
- c. There is liberty to apply; and
- d. Counsel for the Liquidators has conduct of this order.

[26] This court wishes to thank counsel for his useful submissions made in the matter.

M E Birnie Stephenson
High Court Judge

BY THE COURT

REGISTRAR

¹⁵ See paragraph 10 of Jack J judgment In the matter of Exential Investments Inc (in Liquidation)

