

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION**

CLAIM NO. BVIHCOM 2021/0183

BETWEEN:

Signet Bank As

Applicant

and

PARADISO FINANCE LIMITED (IN LIQUIDATION)

Respondent

Appearances:

Ms. Akilah Anderson for the Applicant
Mr. William Barnes for the Creditor

2023: February 14;
June 1.

JUDGMENT

Background

- [1] **MANGATAL, I. (Ag.):** On 6 December 2021 upon the application of Signet Bank AS ("**Signet**") Paradiso Finance Limited ("**the Company**"), was put in liquidation with Mr. Glenn Harrigan of CCP Financial Consultants Limited, being appointed Liquidator ("**the Liquidator**"). The Company was incorporated in the British Virgin Islands ("**BVI**").
- [2] The Liquidator was appointed by Jack J (Ag.) on the ground that the Company was insolvent and/or it was just and equitable that a liquidator be appointed. The Company was deemed to be insolvent due to an unanswered Statutory Demand served on it by Signet, a creditor of the Company in an amount of CHF 595,367.03, or approximately U.S.D. 642,000. The debt which was the subject of the liquidation application was due and payable pursuant to an Arbitral Award of the Court of Arbitration of the Association of Latvian Commercial Banks, on 28 March 2019.
- [3] Paragraphs 4(b) and 5 of the Order under which the Liquidator was appointed required him to obtain the sanction of the Court to make compromises with creditors or alleged creditors of the Company having or alleging they have claims against the Company.
- [4] The application before me, which is an adjourned application dated 13 July 2022, is one in which the Liquidator seeks the Court's sanction and also approval of certain fees ("**the Sanction Application**"). The Sanction Application first came on for hearing on 28 September 2022 before Jack J but was adjourned to allow for filing of evidence by Irina Mikhaylova, the wife of the ultimate beneficial owner of the Company, (or according to Mrs. Mikhaylova, she is herself a beneficial owner, along with her husband Dmitry Shevelev on a 50/50 basis).

- [5] The sole liquid asset of the Company was the proceeds of sale of a valuable coin and medal collection that took place by auction in Switzerland on 21 November 2021 (**"the Funds"**). The source of the Funds is enforcement action taken by the Company in 2017 against a third party debtor, Mr. Vdovin. The amount of the Funds was just under CHF 590.000.
- [6] Signet obtained an attachment order in Switzerland over the funds on 3 July 2019 in relation to the amount due to it under the Arbitration Award.
- [7] The Funds were realized in Switzerland and were held by the Zurich 1 Municipal and Debt Collection Office. In or about December 2021, it came to Signet's attention that Mrs. Mikhaylova had, via her Swiss counsel, written to the Swiss Debt Enforcement Authority requesting that the Funds be released to her. She claimed this on the basis of an alleged assignment to her by the Company whereby the Company assigned the benefit of various English judgment debts and associated enforcement orders against Mr. Vdovin to her, in exchange for the cancellation of various debts owed to her by the Company (**"the Purported Assignment Agreement"**).

The Evidence

- [8] According to the first Affidavit of the Liquidator in support of the Sanction Application, at paragraph 5, the Purported Assignment Agreement took place very shortly before the application to appoint the Liquidator was filed in the BVI and was within the vulnerability period pursuant to the Insolvency Act, 2003. The Liquidator maintains that there were also other concerns about the veracity of the documentary evidence supporting the bona fides of the Purported Assignment Agreement. Further, that the overriding concern was that any funds transferred to Mrs. Mikhaylova would become difficult to recover and therefore be potentially out

of the reach of confirmed bona fide creditors such as Signet, and accordingly, the Assignment Agreement was impugned.

- [9] The Liquidator therefore applied to the BVI Court in December 2021 and received, sanction to, amongst other matters, pursue proceedings in Switzerland or, if necessary, in the BVI to secure the Funds and/or declare the Purported Assignment Agreement as being void. Importantly, the Liquidator states in paragraph 6 of his First Affidavit that at the time that he made the application in December 2021, granted on 21 December 2021 by Jack J (Ag.), Signet was the only known creditor of the Company.
- [10] The Liquidator testifies that, in addition to Signet's attachment order, he instructed Swiss Counsel in the form of Wicki Partners to enter the proceedings on his behalf as liquidator to protect the liquidation estate. The evidence continues, that another alleged creditor of the Company, Swiss Attorneys-at-law Klein Rechtsanwaite AG ("**Klein**") also entered proceedings in the Swiss Court, claiming unpaid legal fees in the amount of CHF 85,505.10. This was disputed originally, says the Liquidator, on the basis that Klein was never engaged by the Company, but rather was engaged by its ultimate beneficial owner Mr. Shevelev. However, Klein did not accept that position and the Liquidator says that it therefore became apparent that the Funds could become tied up in potentially lengthy and costly Swiss proceedings if no compromise could be reached.
- [11] The Liquidator opines that an extended dispute over the Funds was undesirable as the total prospective claims against them by Signet, Klein and Mrs. Mikhaylova exceeded its value.
- [12] However, the Liquidator states that this issue was partially resolved when the Swiss Debt Enforcement Authority came to a decision that the only recognized creditors with entitlement to the funds were Signet and Klein and that it would only disburse the Funds to these two creditors.

[13] By letter of 22 December 2021, the Swiss Debt Enforcement Authority, communicated with Mrs. Mikhaylova's legal representative Mr. Moritz Naf, as follows:

"Zurich, December 22, 2021

Request for creditor change

Arrest No. 26296, Collection No. 69956, Attachment No. 9990

Debtor : Vdovin Andrey Vadimovich, Creditor: Paradiso Finance Limited, ...BVI... ..

Dear Mr. Naf,

We refer to the garnishment proceedings designated above.

In a letter dated December 9, 2021, you indicated to us, on behalf of your client Ms. Irena Mikhaylova, that the claim underlying Collection Order No. 69956 and Garnishment Order No. 9990, respectively, had been assigned to your client by way of an Assignment Agreement dated October 21, 2021.

However, the claim of Paradiso Finance Limited against Mr....Vdovin in the amount of Fr. 27,261,099.76 and Fr. 640,173.38 was subject to an attachment order dated 03 July 2019 for Signet Bank AS. Arrest No 26805 was executed on July 08, 2021. The arrest warrant was served on the debtor, on the one hand, by publication on November 3, 2020 and, on the other hand, by means of international legal assistance in the British Virgin Islands on September 29, 2020. In it, the debtor was explicitly informed of the restriction on the disposal of the objects of the attachment pursuant to Art 275 SchKG in conjunction with Art. 96 para. 1 SchKG and the penal consequences according to Art. 169 StGB in case of infringement. The term "disposition" refers to both legal and actual dispositions. Dispositions by the debtor of assets under arrest are null and void.....

The assignment of the claim secured by attachment by the debtor to Ms. Mikhaylova is clearly to be qualified as a legal disposition of an object of attachment, which is void pursuant to Art. 96SchKG and Art164 para.1CO. Therefore, no valid assignment of the said claim has taken place, which is why no change of creditor in attachment 9990 took place.

The following is decreed:

The change of creditor in garnishment No.9990, debt collection No. 69956 and attachment No. 26296 IS not recorded due to a void order.

Ms. Irina Mikhaylova will not be listed as a creditor in the aforementioned proceedings in the future.

The net proceeds of the realization from the garnishment No.9990 by SINCONA JSC shall not be transferred to Ms. Irina Mikhaylova.

*Pursuant to Art. 17 SchKG, you may appeal against this order within 10 days of receipt to the Zurich District Court, Supervisory Authority for Debt Collection Offices, P.O. Box 8036, Zurich, by way of appeal. The appeal must be submitted in duplicate and must contain a statement of reasons and a request. This order and any evidence must be enclosed. Your contact person will be happy to answer any questions you may have. Kind regards,
Remo, Crestani, Mayor “*

- [14] The 22 December 2021 letter expressly alerted to the fact that there was a right of appeal and the timeline therefor. By a letter dated 20 January 2022, the Swiss Debt Enforcement Authority corresponded with the Lower Zurich District Court, confirming that no appeal had been filed by Mrs. Mikhaylova. Accordingly, according to the Liquidator, the result of this decision is that it became impossible under Swiss Law for any monies from the Fund to be distributed to creditors not recognized in Switzerland. Therefore, that Mrs. Mikhaylova and/or Mr. Shevelev and anyone else claiming in the liquidation outside of Switzerland was excluded from any distribution.

- [15] Paragraphs 9-12 of the Liquidator's First Affidavit are instructive:

“9. The only remaining issue was effectively how, if at all, the monies in the Fund were to be distributed as between Signet and Klein. There were several interlocutory proceedings before the Zurich District Court between the parties. Given that these two claims together were only nominally more than the total monies in the Fund and that any further disputes were likely to be protracted, negotiations took place between Signet and Klein to determine if each could compromise their claim for a timeous disposal of the matter. Accordingly, the parties came to an agreement whereby each of Signet Bank AS and Klein would compromise their full claims to allow the Funds to be distributed between them. In order for the compromise settlement to be finalized the approval of the Company via its appointed Liquidator was required. I sought advice from my Swiss Counsel on this matter and without waiving privilege, their advice is summarized in paragraph 10 below.

10. The funds attached in Switzerland could only be distributed to Signet and Klein the two creditors recognized in Switzerland. Mr. Shevelev and Mrs. Mikhaylova were not recognized as creditors in the Swiss proceedings and there was no way that they could receive any distribution from the Funds. Accordingly if approval was not granted it would lead to the matter being dragged out in the Swiss Courts and at the end of the

day the same two creditors would be the beneficiary of the Funds. However because of the court proceedings the quantum of the funds would likely have been significantly diminished by court costs and legal fees. Accordingly in the circumstances the best course of action was to approve the compromise settlement agreement.

*11. Pursuant to this an agreement dated 13th June 2022 between the Company, Signet and Klein to compromise both Signet and Klein's claim to the Funds ("**the Agreement**") was executed and is shown to me and marked GH-7 for identity. As a result, Klein withdrew its claims against the Company before the Zurich District Court and those proceedings came to an end. ..*

12. Since Signet's claim to the Funds effectively satisfied its claim in the liquidation, I require sanction of this Honourable Court in order to ratify it and I do so ask for ratification by the application filed alongside this affidavit."

- [16] Mrs. Mikhaylova makes a number of allegations in her 1st and 2nd Witness Statements. She has suggested that the Liquidator must explain what efforts he made to collect the funds on behalf of the Company. At paragraphs 12 and 13 she stated as follows:

"12. The Liquidator gives evidence in his Affidavit, at paragraph 10, that the Settlement Agreement is justified because the Funds can only go to Signet and Klein in any event-not Dmitri and myself. However, the Liquidator's evidence does not explain whether he has made any attempts to collect the Funds on behalf of the Company as part of its insolvency estate, to be held and later distributed to creditors with legitimate claims on a pari passu basis.

13. At paragraph 18 of Mr. Harrigan's Affidavit it is suggested that there are other assets available to meet my claim, including an unfulfilled claim against Mr. Vdovin in the amount of CHF 31,151,825. However, as Mr. Harrigan is (or should be aware), that claim was assigned to me on 21 October 2021 in exchange for the cancellation of various debts owed to me by the Company. It is, therefore, at best inaccurate and at worst, misleading for Mr. Harrigan to seek to suggest to this Court that that asset is available to satisfy my claim."

- [17] Mrs. Mikhaylova at paragraph 9 of her First Witness Statement, further claims that the Liquidator has not been impartial. She states that whilst she understands that the Liquidator is being funded by Signet and that it is a common commercial reality for a liquidator to receive initial funding from a creditor, she is of the view (para 15)

that the Liquidator has unfairly prioritized the interests of Signet and Klein over those of herself and her husband.

- [18] In responding to allegations made by Mrs. Mikhaylova, the Liquidator in his Second Affidavit responded as follows in paragraphs 5, 6, 21 and 22:

“Settlement of the Swiss proceedings and the complaint of breach of the pari passu principle

*5. It was within my powers and obligations as liquidator to obtain competent Swiss counsel to guide my decision making in the Swiss debt enforcement proceedings and generally in the proceedings in that jurisdiction. I did so in the form of the engagement of Swiss counsel, Wicki Partners AG (**Wicki Partners**).*

6. I note at paragraph 12 of Ms. Mikhaylova’s FWS and at various parts of her SWS, in particular at paragraphs 42, 51, 52 and 60-64, that I made no effort to collect the Funds into the estate so that they could be distributed on the basis of the pari passu principle amongst creditors in the BVI liquidation. She also suggests that rather than settling the debt enforcement proceedings with the creditors to the Fund who were not excluded as such by the Swiss Debt Enforcement Authority, that I ought to have accepted the Funds on behalf of the Company and then in turn distributed them in the BVI liquidation. For the avoidance of any doubt therefore, I hereby state that it was never my understanding from the advice received, privilege to which I do not waive, that this course was open to me. I am obligated as a fiduciary and an officer of the BVI court to ensure that my actions as liquidator are consistent with the laws of which ever jurisdiction in which I may have cause to deploy my powers. As such, I received and followed advice that there was no distribution possible or appropriate to anyone not expressly recognized by the Swiss Debt Enforcement Authority as a creditor in Switzerland. As such, there is no question arising as to pari passu distribution amongst BVI creditors, assuming that any such claim as was made, was subsequently proven.

.....

21. The satisfaction of Signet Bank AS’s claim hinged entirely on its ability to be recognized as a creditor in Switzerland. It is indeed arguable that I require sanction at all in this respect, since it is not a BVI distribution per se. However, I deemed it appropriate to present the facts to the court and to obtain its sanction in the interest of transparency. It was open to Ms. Mikhaylova to appeal the finding of the Swiss Debt Enforcement Authority and she did not do so. I cannot comment on the curious reason given that she was not aware of her right to do so, when there is correspondence directly from the Authority saying so.

22. The request for proof of debt in the liquidation was done in accordance with the standard procedures followed in liquidation matters however it

was never believed that the Swiss funds could be used to settle the BVI claims as advice had confirmed that this was not possible under any circumstances. The Funds were never under the direct jurisdiction of the BVI court given how they were held. This became apparent to me in the course of taking and receiving advice after I had obtained leave to participate in the Swiss proceedings.”

[19] I note that separately from the Purported Assignment Agreement, which the Swiss Debt Collection authorities have in no uncertain terms labelled “void”, Mrs. Mikhaylova has made another alleged claim. On what was an extended deadline offered by the Liquidator, and indeed, on the very last date for making a claim in the BVI liquidation, on 27 June 2022, Mrs. Mikhaylova made a claim in the sum of U.S.D. 574, 199.09 which she claims are comprised of two loans she made to the Company on 1st December 2016 and 14th February 2019. It is noted that the Power of Attorney by which the Company confirmed the debt to Mrs. Mikhaylova is signed by her husband Mr. Shevelev. Mr. Shevelev has also now made a claim. These claims are of a wholly different nature and completely separate from the claim Mrs. Mikhaylova originally made to try and lay claim to the Funds by way of the Purported Assignment Agreement. These claims, from the UBO and/or UBOs are very curious.

[20] They are made even more so because the Liquidator states that in a detailed dossier of documents which he finally received from the Registered Agent, there is no mention anywhere of these loans, or these claims submitted when the proof of debts were requested.

[21] The Liquidator states that having received the claim from Mrs. Mikhaylova, he wrote to the Company’s Swiss Counsel on the same day, 27th June 2022, asking for payment to be delayed pending consideration of the matters raised in the correspondence. However, the Liquidator indicates that he was advised that effectively the matter was effectively concluded, even though some aspects and formalities were left to be done.

[22] At paragraph 16 of his Second Affidavit the Liquidator states as follows:

“ 16. I have also attached a letter from the Company’s Swiss Counsel dated 29th June 2021 confirming the position and that the Swiss Court had effectively terminated the proceedings on the 28th.... I was thereafter advised on 1st July that Signet Bank AS had received its portion of the Funds.”

Submissions on behalf of Mrs. Mikhaylova

[23] It was Mr. Barnes’ submission on behalf of Mrs. Mikhaylova that the present situation is not one in which the Court is blessing a step that the Liquidator already has power or sanction to do but is rather a situation in which it is for the Court to decide whether to grant sanction. I accept that this is correct. This is because, as stated in paragraph [3] above, paragraphs 4(b) and 5 of the Order under which the Liquidator was appointed required him to obtain the sanction of the Court to make compromises with creditors or alleged creditors of the Company having or alleging they have claims against the Company.

[24] Counsel also argued that the Liquidator, in seeking sanction retrospectively, has provided no sufficient or adequate reason for doing so, as opposed to seeking sanction before entry into the Settlement Agreement. It was further argued that Mrs. Mikhaylova had a right to expect the Liquidator to bring in the Funds so that *pari passu* distribution could take place amongst BVI creditors.

The Law

[25] A number of authorities were cited to me, including ***Redhouse Holdings Limited et al v Johnson***¹, the English Court of Appeal decision in ***Re Greenhaven Motors Ltd. (In liquidation)***² and the decision of the Eastern Caribbean Court of Appeal in ***Phoenix Group Foundation v Jackson***.³

¹ BVIHCM 2010/0138, 2 December 2020.

² [1999] 1 BCLC 635.

³ BVIHCMAP 2020/0019.

[26] It is plain from the authorities that the Court has power to grant sanction retrospectively. The Liquidator's duty is to put the relevant materials before the Court but it is for the Court to decide whether or not to grant sanction.

[27] In **Re Greenhaven**, Chadwick LJ, at page 643 letter a-b, and f-h, provides guidance as follows:

"In my view, the correct approach in cases under section 167(1)(a) of the Act was identified by Lightman J in Re Edenote Ltd. (No. 2) [1997] 2 BCLC 89 at 92. He said :

'Where a liquidator seeks the sanction of the court and takes the view that a compromise is in the best interest of the creditors, in any ordinary case, where (as in this case) there is no suggestion of lack of good faith by the liquidator or that he is partisan the court will attach considerable weight to the liquidator's views unless the evidence reveals substantial reasons why it should not do so, or that for some reason or other his view is flawed.

.....

In reaching that decision, the court may have to weigh the different interests of creditors or contributories It will not give weight to the wishes of those who will be unaffected whichever way the decision goes; for example the interests of contributories who have no realistic prospect of receiving a distribution in any foreseeable circumstances Subject to that, the court will give weight to the wishes of creditors and contributories, if uninfluenced by extraneous considerations, are likely to be good judges of where their best interests lie. For the same reason, the court will give weight to the views of the liquidator, who may, and normally will, be in the best position to take an informed and objective view. But, as I have said, at the end of the day it is for the court to decide whether or not to sanction the compromise."

Resolution of the Issues

[28] I note that the Liquidator's application seeking sanction was filed in July 2022, not long after the signing of the Agreement. The Liquidator also explained that because the Swiss Authorities had made it clear that they would not recognize the Purported Assignment Agreement as valid, there was no longer any urgency for

the Liquidator to apply to have an action brought in the BVI to set it aside. I accept these explanations and also accept the Liquidator's stance that prolonged litigation contesting Klein's entitlement to fees would have been undesirable, involving as it would potentially lengthy and costly Swiss proceedings if no compromise could be reached. I accept the Liquidator's explanation as reasonable and expressed from an objective, informed point of view.

[29] Mrs. Mikhaylova has sought to raise allegations of bias against the Liquidator. However, it seems to me that the Liquidator was at pains to reach out to both Mrs. Mikhaylova and Mr. Shevelev regarding the submission of proof of debts and indeed, he even granted several extensions of time when they both claimed not to have received documents on time.

[30] There has also been an argument raised in relation to the word "Waiver" in the agreement, but I can see no proper basis for the issue to arise and the mention of a high value claim in the offing against Signet mentioned by Mrs. Mikhaylova seems spurious. The Liquidator points out that there is no documentation whatsoever to support these assertions now being made late in the day as further purported grounds for contesting the handling of the Swiss proceedings.

[31] Whilst the Court has to take into account the views of creditors, there must be good reasons for their views, and the creditors must also not be taking into account or influenced by any extraneous considerations when proffering their views. In my judgment there is no merit whatsoever to the arguments coming from Mrs. Mikhaylova. Mrs. Mikhaylova is the same person who attempted to make a claim, pursuant to the Purported Assignment Agreement. Indeed, it would seem that it is she who wanted to try and "scoop the pot", and not Signet and Klein as argued on her behalf.

[32] In the balance of the Court's considerations, weight must be placed on the legal advice that the Liquidator sought and obtained. As the Liquidator recognized in his

evidence, it was within his powers and obligations to obtain competent Swiss Counsel to guide his decision making in the Swiss debt enforcement proceedings and generally in the proceedings in that jurisdiction. The advice received from Wicki Partners falls into the following main categories:

- (1) As a consequence of the Swiss Enforcement Procedures, it was impossible for the Funds to be distributed to any creditors except Signet and Klein. There was no distribution possible or appropriate to anyone not expressly recognized by the Swiss Debt Enforcement Authority as a creditor in Switzerland.
- (2) There could not have been any distribution of the Funds to the Liquidator because they were already the subject of attachments by Signet and Klein in the Swiss proceedings, and those attachments exceeded the amount of the Funds.
- (3) For the Company to have continued in prolonged litigation contesting Klein's entitlement to fees could have had the Funds tied up in potentially lengthy and costly Swiss proceedings if no compromise could be reached.

[33] In my judgment, the Liquidator acted in what he considered to be the best interests of the known creditors in entering into the Settlement Agreement. There is no sound evidence that he was partisan or lacked good faith. This is not a case where the Court could be satisfied that, if the Company was not permitted to enter into the compromise the Liquidator had reached there would then be some better terms or some other compromise on offer. The decision was really between the proposed compromise and no compromise at all.

[34] As regards the advice at paragraph 32 (2) above, the enforcement process in Switzerland is unsurprising, and seems very similar to garnishee proceedings under the BVI Civil Procedure Rules, where the Company brought enforcement proceedings regarding the Coin and Medal Collection owned by Mr. Vdovin, but Signet and Klein in turn secured attachment to the Funds with regards to their own debts owed by the Company.

- [35] The argument raised by Mr. Barnes on behalf of Mrs. Mikhaylova that she had a right to expect the Liquidator to bring in the Funds so that *pari passu* distribution could take place amongst BVI creditors was at first blush, attractive. But when closely examined it has no merit because of the state of Swiss Law, or alternatively the legal advice received by the Liquidator upon which he reasonably relied. But it also is incorrect because of the nature of the attachment proceedings which were already on foot in Switzerland before the Liquidator was appointed in the BVI, and this included attachment proceedings secured by Signet, Signet having commenced those attachment proceedings, before it applied for the Company to be liquidated and the Liquidator appointed in December 2021.
- [36] Save for the arguments advanced as to the Settlement Agreement, and the Court being asked to deal with the claimed fees and expenses with that in mind, there is no contest to the fees claimed. They appear reasonable in all of the circumstances.
- [37] I am content to sanction the settlement agreement and the payment out settling the claim of Signet. I also approve the fees, costs and expenses sought incidental to the Swiss and BVI Proceedings in the sum of U.S.D.32, 485.00. I further order that the costs of the Liquidator's fees and expenses of this application be recovered from the assets in the Liquidation.

Ingrid Mangatal (Ag)
High Court Judge

By the Court

Registrar