

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

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

CLAIM NO. BVIHC (COM) 2020/0013

**IN THE MATTER OF MERIBELLE INVESTMENTS LIMITED (In Liquidation)
AND IN THE MATTER OF THE INSOLVENCY ACT 2003**

BETWEEN:

MICHAEL JAMES GREGSON
(As Liquidator of Meribelle Investments Limited (In Liquidation))
Applicant

and

[1] MERIBELLE INVESTMENTS LIMITED (in Liquidation)
[2] THE REGISTRAR OF CORPORATE AFFAIRS
Respondents

Appearances:
Decided on paper

2020: April 23

THIRD JUDGMENT

[1] **JACK, J [Ag.]**: This matter was last before me on 20th March 2020. On that occasion I handed down a judgment which raised an issue as to whether the liquidator's appointment could properly be recognized in this jurisdiction when the only debt owed by the company was a debt to the UK revenue. The applicant was represented on that occasion by Ms. Walmisley; the second defendant by Mr. Grayson. I adjourned the matter to a date subsequently fixed as 22nd April 2020, so that the parties could consider this issue. I invited the Attorney-General to appoint an *amicus curiae*. The Attorney-General did not reply to that invitation, but in the light of the coronavirus lockdown that is understandable.

[2] On 2nd April 2020 the applicant served a notice of discontinuance “pursuant to CPR 37.3 in order to discontinue the proceedings number 0013 of 2020 against Meribelle Investments Limited and The Registrar of Corporate Affairs.” The notice of discontinuance then noted that “Meribelle Investments Limited have not participated in the proceedings”, but that was not wholly surprising given that Meribelle had been struck off. The effect of serving a notice of discontinuance is that the “claim... is brought to an end”: CPR 37.5(2). The Registry accordingly vacated the hearing listed for 22nd April 2020.

[3] Subsequently, Bedell Cristin BVI Partnership, the applicant’s legal representatives, wrote to the Court on 17th April 2020 inviting the Court of its own motion to make an order in the following terms:

- “1. The Attorney General [be] joined as a Respondent to the Application for the purposes of addressing the Court on the matters as identified in paragraph 15 of the Judgment of the Court dated 16 March 2020.
2. The Applicant shall serve this Order on the Attorney General by 4.30pm within 2 working days of receiving a copy of this Order.
3. The Attorney General shall communicate to the Applicant’s Legal Practitioners whether it proposes to participate in any further hearings of this application within 14 days of receipt of this Order.
4. List for further hearing on the first available date after 15 May 2020 with a time estimate of 1 hour.
5. Costs Reserved.
6. Liberty to Apply.”

[4] The Court does have a power to make orders of its own motion, or in the language of the CPR “of its own initiative”: CPR 26.2(1). In the current case, however, the claim has terminated. It would in my judgment be an unusual use of the Court’s powers to make orders *of its own initiative* to revive, Lazarus-style, an action which is dead and buried. (There may also be a duty to give the Attorney an opportunity to make representations before making an order against him: CPR 26.2(2).)

[5] Now I infer from Bedell Cristin’s letter of 17th April that they may not have fully appreciated procedural consequences of serving the notice of discontinuance.

The Court has a longstop power to rectify procedural errors, no matter how grave: CPR 26.9(3). At present, however, it is suggested that the Attorney-General be added as a party, but without any explanation of what cause of action might lie against him, or why he might be a necessary party. No re-re-amended claim form has been placed before the Court.

- [6] The letter seems to be suggesting that the Court should, in effect, renew its invitation to the Attorney to appear as, or appoint, an *amicus*. That, however, is not in my judgment an appropriate use of the Court's powers. The Court is naturally grateful whenever the Attorney provides assistance as a friend of the Court, but that is a matter entirely for him.
- [7] Accordingly, I decline to make any order of my own motion. It is of course open to the applicant to issue an application in the usual way seeking to add the Attorney-General as a respondent. No doubt a suitably re-re-amended pleading would form part of the application. The application can be served on the Attorney and then listed in the usual way for a hearing with both the applicant and the Attorney-General or crown counsel present.

[8] After distributing a copy of the draft judgment for corrections, Mr. Tim Wright of Bedell Cristin informed the Court that there were creditors of Meribelle other than the UK revenue. It would of course be possible for those other creditors to apply in this Territory for the appointment of a liquidator. For the reasons given in my second judgment, it may, however, be that a local liquidator would be obliged to refuse a proof of a foreign tax debt.

Adrian Jack
Commercial Court Judge [Ag.]

By the Court

Registrar