

**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 AFFAIR
Respondents

Appearances:

Ms. Lisa Walmisley for the Applicant.
No appearance for the First Respondent
Mr. Grayson for the Second Respondent

2020: March 16

JUDGMENT

[1] **JACK, J [Ag.]**: On 3rd February 2020, I delivered a written judgment flagging up a number of issues which the applicant needed to address. These have now been dealt with. What I overlooked when I gave that judgment is that there is a potential substantive problem with the application. The current application is, at least arguably, made in order to enforce a claim to tax due in a foreign jurisdiction.

[2] In order to understand the point, I should state the facts as they now appear. The company ("Meribelle") was incorporated in this Territory on 21st July 2006. By a

petition to the English Companies Court dated 2nd September 2016, Her Majesty's Commissioners of Revenue and Customs sought a winding up order in respect of Meribelle for non-payment of UK tax, interest and penalties in the sum of £45,120.69. Of that figure £4,605.00 was in respect of penalties for non-payment of the taxes. The petition makes it clear that Meribelle was incorporated here. On 19th December 2016 Registrar Derritt (as she then was) made a winding-up order against the company. Counsel appeared for the Revenue with no appearance for Meribelle. There appear to have been no supporting creditors. On 20th March 2018 the United Kingdom Secretary of State appointed the applicant ("Mr. Gregson") as liquidator of Meribelle pursuant to the order of 19th December 2016.

- [3] On 22nd January 2019 Meribelle was struck off in this jurisdiction for failure to file a register of directors. Mr. Gregson originally applied on 23rd January 2020 for his appointment as a liquidator in foreign proceedings to be recognized by this Court and for consequential relief, so that he could lodge the register of directors. The application has since been reamended, but I do not set out the modest changes in the relief sought.
- [4] So far as appears in the evidence to date, the only creditor of Meribelle is the UK Revenue and the only asset of Meribelle a property in Hampshire called Wheatley Oast, Wheatley Lane, Kingsley near Bordon.
- [5] After discovering that Meribelle had been struck off, Mr. Gregson instructed local counsel, Bedell Cristin BVI Partnership. The firm wrote to SHRM Trustees (BVI) Ltd ("SHRM"), Meribelle's registered agents, to ask them for their assistance. SHRM did not respond in writing. It appears from subsequent discussions between Bedell Cristin and the agent that SHRM claim that Mr. McCarthy owed them substantial sums and that the matter was contentious. In my earlier judgment I raised the question whether a BVI registered agent is entitled to some form of lien to secure monies owed it by the company, however, SHRM do not wish to appear to argue the point, so I shall not consider it further.

- [6] After having no response from SHRM, Bedell Cristin contacted the BVI Financial Services Commission seeking to have Meribelle restored to the register. By letter of 7th November 2019, the Commission explained its position:

“You correctly stated that the liquidator can make an application to restore the company to the register. However, according to our records the company is not in liquidation. As the liquidator was not appointed through the BVI court in accordance with the BVI Insolvency Act we are unable to acknowledge Mr. Gregson as liquidator with ability to restore the company.

Once the proper procedures are followed to have the liquidator recognized in the BVI, we will be inclined to consider the application for restoration...”

- [7] Mr. Gregson’s application was listed to be heard today. Whilst reading the papers over the weekend, I noticed a potential problem. By recognizing Mr. Gregson’s appointment, this Court would be indirectly enforcing UK revenue law. In **QRS 1 ApS and others v Frandsen**¹, the defendant had been the owner of five Danish companies, who were the plaintiffs in the action brought in England. He stripped the companies of their assets and then changed his own domicile to England. The Danish tax authorities put the five companies into liquidation. The liquidator brought proceedings in the name of the five companies for restitution and breach of Danish company law against the defendant. The English Court of Appeal held:

“It is a fundamental principle of English law that our courts will not directly or indirectly enforce the penal, revenue, or other public laws of another country — see rule 3 of **Dicey & Morris**² and the comment upon it in that work. On the English authorities it is clear that the present action falls foul of that rule: in substance it involves the indirect enforcement of Denmark’s revenue law.”

The Court rejected an argument based on European Union law, which does not relevant to the current case, and proceeded to dismiss the action.

¹ [1999] 1 WLR 2169.

² Then 12th Ed, 1993, Vol 1 p 97; now rule 3 of Dicey, Morris and Collins on the Conflict of Laws (15th Ed, 2018) at para 5R-019.

[8] The current case may potentially fall foul of that principle as well. The only reason for the Court to recognize Mr. Gregson's appointment would be so that he can restore the company to the register. He would then use his recognition to appoint himself (or his nominee) as a director of Meribelle and proceed to sell Wheatley Oast, thus being able to reimburse the UK Revenue.

[9] I originally wondered whether the Court's refusal to enforce foreign revenue law also applied as between the United Kingdom and the British Overseas Territories. What limited research I have done suggests that it does. In **Municipal Council of Sydney v Bull**³, New South Wales legislation⁴ provided for the owners of property on Moore St in Sydney to contribute to improvement works. The Council sought to recover £3,919.4s.3d. from the defendant in the English High Court. The monies were owed over the period 1898 to 1904. Grantham J held:

“The action is in the nature of an action for a penalty or to recover a tax; it is analogous to an action brought in one country to enforce the revenue laws of another. In such cases it has always been held that an action will not lie outside the confines of the last-mentioned State.”

[10] It should be noted that Grantham J does not distinguish between the debt owed prior to 1st January 1901 to that owed after. That date was when New South Wales ceased to be a colony of the United Kingdom and, on the founding of the Commonwealth of Australia, became an Australian state.

[11] In **Attorney-General for Canada v William Schulze & Co**⁵, there had been proceedings in Canada for the forfeiture of goods imported in breach of Canadian customs law. The Attorney-General was successful in the Canadian proceedings and forfeiture was ordered. The Canadian court awarded him his costs. He then sought to recover the costs in the Court of Session. He lost, for similar reasons to the **Sydney Municipality** case. Lord Stormonth Darling pointed out:

³ [1909] 1 KB 7.

⁴ The Moore Street Improvement Act 1890 (54 Vict No 30 of the Statutes of New South Wales) and the Moore Street Improvement Act Amendment Act 1892 (55 Vict No 13).

⁵ (1901) 9 SLT 4.

“It is no doubt rather anomalous that the King, through his Courts in Scotland, should refuse to recognise a debt due to himself in Canada, merely because it arises out of the execution of a Revenue Statute. But it was not maintained, and I think is not maintainable that in the sense of international law, the mother country and her self-governing colonies stand in different relationship from that which exists between two foreign states. If that relationship is ever to be modified it must be done by reciprocal legislation.”

- [12] These views do not seem to depend on the question whether the sovereign when claiming taxes was acting in right of New South Wales, or Australia, or Canada. It may thus not matter whether the Queen acts in right of the Virgin Islands or in right of the United Kingdom when the question of enforcement of UK tax obligations in this jurisdiction is in question.
- [13] If it did matter, the formal determination of the Attorney-General of Gibraltar, Mr. Michael Llamas QC, was that the Queen was the Queen of Gibraltar because she was the Queen in right of Gibraltar: see **Southport Properties Ltd v Kouari**.⁶ He was giving that view both on behalf of the United Kingdom Government and on behalf of Her Majesty's Government of Gibraltar: see the discussion of the Attorney's functions in **Trustees of the John Mackintosh Educational Trust v Attorney-General**.⁷ It may therefore be that the same would apply to this Territory.
- [14] Now there is some tax legislation between the United Kingdom and the BVI. The **International Tax Enforcement (British Virgin Islands) Order 2014**⁸, however, relates to the exchange of information between the relevant tax authorities rather than the reciprocal enforcement of tax debts in the respective jurisdictions. This

⁶ 2017 Gib LR 79 at para [13] and Schedule, accessible at: https://www.gcs.gov.gi/images/judgments/supremecourt/2017/southport_properties_ltd_v_mohamed_kouari.pdf

⁷ 2015 Gib LR 365 at paras [48]ff, accessible at https://www.gcs.gov.gi/images/judgments/supremecourt/2015/the_trustees_of_the_john_mackintosh_educational_trust_v_her_majestys_attorney_general_for_gibraltar_and_anor.pdf

⁸ SI 2014 No 1359.

Order in Council amends a 2008 agreement (which I have not seen) between the two governments on the exchange of information. Whether the public policy expressed in the **Sydney Municipality** and **Schulze** cases is still good law may be a difficult question.

[15] In my judgment, it is appropriate for the hearing today to be adjourned, so that these matters can be properly argued. If the Registrar of Corporate Affairs does not wish to argue the point, I will invite the Attorney-General to consider appointing an *amicus curiae* to argue that giving recognition to Mr. Gregson's appointment would be contrary to the rule that the Court will refuse to enforce foreign revenue debts. The Attorney-General may, of course, feel that modern public policy here in the BVI is in favour of enforcement of foreign tax debts. He would of course be able to argue that as or through counsel for the Registrar of Corporate Affairs.

[16] I shall direct that the applicant serve all the relevant papers on the Attorney-General by close of business on Wednesday 18th March 2020. The Attorney-General should then have a fortnight to decide whether he is willing to appoint an *amicus*.

Adrian Jack
Commercial Court Judge [Ag.]

By the Court

Registrar