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:
No appearances. Judgment delivered of the Court's own motion after sight of the papers.

2020: February 3.

JUDGMENT

[1] **JACK, J [Ag.]**: By an application made on 23rd January 2020, the applicant ("Mr. Gregson") applies for the following relief:

> "1. The Applicant is recognised as a foreign representative who is permitted to apply to the Court for orders under section 467(3) of the [Insolvency] Act [2003] in aid of foreign proceedings (being, the Liquidation of Meribelle Investments Limited (in Liquidation)… In the High Court of Justice of England and Wales, Business and Properties Court, Company and Insolvency List (Ch) CR-2016-005372).

2. Pursuant to section 467(3)(h) of the Act and section 217(4) of the BVI Business Companies Act 2004, on condition that;
2.1 the Applicant files at the Financial Services Commission a current Register of Directors; and

2.2 pays any outstanding fees due;
the Registrar of Corporate Affairs shall restore the Company to the Register.

3. Pursuant to section 467(3)(h) the Applicant shall have the powers under section 186 of the Act to sell or otherwise dispose of the property of the Company."

[2] The application then says that the applicants "rely on the affidavit of [Mr Gregson]…, which sets out the full grounds of the application." The Civil Procedure Rules rule 11.7(1)(a) requires an application to state "briefly the grounds on which the applicant is seeking the order." It is not in my judgment proper compliance with this provision to cross-refer to an affidavit. I shall, however, give leave to amend the application to cure this defect.

[3] As to the substantive issues, the facts set out in Mr. Gregson's affidavit are these. The company ("Meribelle") was incorporated in this Territory on 21st July 2006. On 19th December 2016 Registrar Derritt (as she then was), sitting in the English Companies Court, made an order winding the company up. The order is in a form appropriate to an English company. The title starts "In the Matter of Meribelle Investments Ltd" without any mention that the company is incorporated abroad. It recites the petition of Her Majesty's Revenue and Customs dated 1st September 2016 and the appearance counsel for the petitioner with no appearance for Meribelle. It then says: "It is ordered that Meribelle Investments Ltd (registration number) be wound up by this court under the provisions of the Insolvency Act 1986." (The blank after "registration number" is in the original.) In the left hand margin there is a handwritten notation "1041035". This is the BVI company number, but it is unclear why this number was not included in the body of the printed order.

[4] On 20th March 2018 the United Kingdom Secretary of State appointed Mr. Gregson as liquidator of Meribelle. The letter of appointment merely recites the Companies Court action number and the BVI company number. It gives no indication that Meribelle is a BVI company.

[5] So far as the evidence shows, the director of Meribelle between 2010 and 7th April 2017, when the winding-up order was made, was Candolle Management Ltd ("Candolle"). Where Candolle was incorporated is unclear. An English Companies House search shows that it is not an English company. On 7th April 2017 Mr. Rory McCarthy was appointed as director.

[6] The only asset of Meribelle which Mr. Gregson has been able to identify is a property in Hampshire called Wheatley Oast, Wheatley Lane, Kingsley near Bordon. From the Land Registry plan, it is, or at least I assume it to be, an oast house converted into a dwelling on a farm, Wheatley Farm. Meribelle was registered as the proprietor of the property in 2006. It is where Mr. McCarthy lives.

[7] On 22nd January 2019 Meribelle was struck off in this jurisdiction for failure to file a register of directors. After discovering that, 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. In its letter, the firm suggests that Mr. Gregson did not need to ask for this Court to recognise his appointment by the English authorities. It cited **KMP International NV v DP Holdings SA** for that proposition. There are a number of decisions in that litigation, including by Wallbank J[1], the Court of Appeal[2] and indeed myself[3]. It is not clear to me that any of the judgments is authority for the proposition that a liquidator appointed (or purportedly appointed) over a BVI company by a foreign court can act in this jurisdiction without being recognised by this Court, however, this is an issue for another day.

[1] BVIHC (COM) 166 of 2016 (delivered 23rd May 2017).
[2] BVIHCMAP 2017/0013 (delivered 18th April 2018), reversing Wallbank J's delivered 23rd May 2017.
[3] BVIHC (COM) 229 of 2017 (delivered 19th December 2019).

[8] SHRM did not respond. 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. Whether a BVI registered agent is entitled to some form of lien to secure monies owed it by the company for which it is the registered agent is a potentially important question. I shall give directions for SHRM to intervene in the proceedings, if so advised.

[9] 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…"

[10] Mr. Gregson's application is listed to be heard on 16th March 2020. In order that that hearing is effective, it may be useful for Mr. Gregson to put in further evidence (a) of the debt claimed to be owed to HM Revenue and Customs; (b) of any statutory demand served under the English legislation and of how it was served; (c) of the petition presented to the English Companies Court with the evidence in support; (d) of whether (and if so, how) Registrar Derrett was made aware that Meribelle was a BVI company; (e) of how Meribelle's company number came to be handwritten on the winding-up order; and (f) of service of the petition on Meribelle.

[11] Accordingly, I direct Bedell Cristin to draw up an order:

(a) That the applicant do by 24th February 2020 file and serve an amended application complying with CPR 11.7(1)(a);

(b) Permitting the applicant, if so advised, by 24th February 2020 to file and serve any further evidence on which he seeks to rely; and

(c) Permitting SHRM, if so advised, by 24th February 2020 to apply to be joined as a party, such application to be supported by evidence;

(d) Allowing any person affected by the order seven days from the date of service of the order to apply to vary or discharge the order.

Adrian Jack
Commercial Court Judge [Ag.]

By the Court

Registrar