

**IN THE EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

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

Claim No: BVIHCM 155 of 2017

BETWEEN:

[1] **PEAK HOTELS AND RESORTS GROUP LTD**
[2] **LIGHTRAY IMAGING INC**

Applicants

and

[1] **STUART MACKELLAR**
[2] **PAUL PRETLOVE**
[3] **AHL HOTELS (2017) LTD**

Respondents

Appearances:

Mr. Paul Stanley QC for Peak Hotels and Resorts Group Ltd, the First Applicant
No appearance for Lightray Imaging Inc, the Second Applicant
Mr. Robert Nader for Mr. Mackellar and Mr. Pretlove, the First and Second
Respondents
No appearance for AHL Hotels (2017) Ltd, the Third Respondent
Mr. Emery for Mr. Holling, Mr. Evans and Mr. Kamel, the would-be intervenors

2019: 25 November;
26 November

JUDGMENT

[1] **JACK, J [Ag.]:** There is before me an application for a declaration that the first and second respondents, Mr. Mackellar and Mr. Pretlove, have not been validly

appointed as liquidators of the third respondent. There is a claim in the alternative to terminate the liquidation.

- [2] This is an unusual case. The facts go back to 2013, when an Indian company put a luxury hotel group, Aman Resorts, on the market. Mr. Vladislav Doronin heard of the investment possibility. He was introduced to Mr. Omar Amanat, an American. They agreed to purchase the hotel group together.
- [3] The structure which the two men put together was this. Mr. Amanat used a company, Peak Hotel and Resorts Ltd ("PHRL"), to own a 33.77 per cent share in a holding company, Peak Hotels and Resorts Group Ltd ("PHRGL"). Mr. Doronin used a company, Tarek Investments Ltd ("Tarek"), to hold the remaining 66.23 per cent of PHRGL. PHRGL in turn owned all the share capital in Aman Resorts Group Ltd ("ARGL"). ARGL has been renamed AHL Hotels (2017) Ltd and is the third respondent to the current application. ARGL in turn owned all the shares in Silverlink Resorts Ltd ("Silverlink"), which is or was the operating company for the hotel chain.
- [4] Another Doronin company, Pontwelly Holding Co Ltd ("Pontwelly"), made a loan of US\$168 million to ARGL. This loan was secured by a pledge of all the shares in Silverlink.
- [5] Unfortunately, Mr. Amanat, it turns out, was a fraudster. He was in December 2017 convicted before District Judge Gardephe and a jury in the Southern District of New York of various fraud offences involving securities. None of the offences concerned the current case. The judge refused him bail pending sentence on the basis that he had shown "a disregard and a disdain for the Court and for legal process." Notwithstanding the long period which has elapsed, I am told Mr. Amanat has still not been sentenced and is presumably still languishing in gaol.
- [6] Relations between Mr. Doronin and Mr. Amanat broke down soon after completion of the purchase. By July 2015 ARGL had defaulted on its loan repayments to

Pontwelly. Pontwelly commenced foreclosure proceedings in New York (which was the governing law and jurisdiction of the loan). These resulted in a judgment on 11th August 2015 whereby Pontwelly became the legal and beneficial owner of the shares in Silverlink. Pontwelly subsequently transferred the shares in Silverlink to Aman Hotels Overseas Ltd (“AHOL”).

- [7] PHRL had earlier issued proceedings in London, initially against Tarek, PHRGL and two other individuals which were amended to include a challenge the transfer of ownership in the hotel chain. On 2nd October 2015 Leon J (Ag) granted PHRL leave to bring derivative proceedings as a minority shareholder in PHRGL and as an ultimate minority shareholder of ARGL. The Particulars of Claim in the London action were subsequently amended to reflect this change. Mr. Doronin was added as an additional defendant, as was AHOL, and others.
- [8] In the meantime, PHRL lost an arbitration in Hong Kong between it and some Chinese investors. As a result, on 2nd March 2016 this Court wound up PHRL. The liquidators subsequently settled the London proceedings by a consent order made by Asplin J on 7th March 2016. The liquidators abandoned the claims in the London proceedings.
- [9] Mr. Amanat was not happy with that result. He sought to pursue what District Judge Ramos, sitting in the Southern District of New York on appeal from US Bankruptcy Judge Chapman, described in his opinion of 31st March 2019 as “a proxy battle in a scorched earth war between [himself] and Vladislav Doronin over the ownership of ultra-exclusive Aman Resorts.” This comprised two separate bankruptcy proceedings.
- [10] The first was issued by Mr. Amanat and others in New York on 4th March 2016, two days after the winding up of PHRL. This sought unpaid directors’ fees and unpaid transaction fees and sought the bankruptcy of ARGL under Chapter 11 of the US Bankruptcy Code, the provisions for reorganization of an insolvent company. A corporate director of ARGL, Carpentaria Management Services Ltd

(an Amanat entity), instructed American attorneys, Brown Rudnick LLP, to consent to Chapter 11 relief. Such an order was made on 9th March 2016. The following day the Doronin parties got wind of what had occurred. They appointed fresh attorneys to act for ARGL and applied to set aside the order.

- [11] This application came before Judge Chapman, a bankruptcy judge in New York on 28th March 2016. Brown Rudnick said that they had been instructed by Mr. Amanat, who “hoped to challenge as a voidable transfer the foreclosure that resulted in ARGL’s losing its shares of Silverlink.” Judge Chapman considered that “that’s not a proper purpose for filing an involuntary.” At a subsequent hearing on 14th July 2016 Judge Chapman said:

“I think that is very serious to file an involuntary in bad faith, as this one clearly was, and I would say it appears to have been filed in bad faith-plus, not merely a couple of disgruntled creditors who think they can file an involuntary and turn out that they’re mistaken, but truly in bad faith.

- [12] She set aside the bankruptcy order.
- [13] The second was a petition issued in Florida on 24th April 2017 under Chapter 7 of the US Bankruptcy Code for the winding-up of PHRGL. The background to this was that High-Def Zone Inc (“High-Def”), a small business which installs audio-visual systems in homes, had done work at the behest of Mr. Amanat. Mr. Amanat procured High-Def to issue the Chapter 7 bankruptcy proceedings. PHRGL’s address for service was given as the address of Mr. Amanat’s own flat in Miami. In fact, PHRGL had been struck off the BVI register of companies on 12th August 2016 (the same day ARGL was struck off the BVI register). PHRGL did not therefore respond to the Chapter 7 proceedings. (Both PHRGL and ARGL have subsequently been restored to the BVI register.)
- [14] On 22nd May 2017 the US Bankruptcy Court in Florida appointed Jacqueline Calderin as Chapter 7 trustee of PHRGL. On 29th June 2017, she filed a motion to that Court to authorize her taking a \$100,000 loan from LightRay Imaging Inc

(“LightRay”). LightRay is a litigation funder, one of whose owners is Ali Farooq, a relative of Mr. Amanat by marriage. That motion was granted. Subsequently, LightRay obtained leave from the Bankruptcy Court to apply to revive PHRGL. On 1st August 2017 Ms Calderin sought leave from the Bankruptcy Court to appoint a director of ARGL. This was granted shortly afterwards and she appointed Madison Director Services (“Madison”) as the director of ARGL.

[15] On 8th August 2017, Mr. Pretlove, as agent for Madison, filed a voluntary Chapter 11 petition in the Florida Bankruptcy Court to put ARGL into bankruptcy. The following day, Ms Calderin and Madison put ARGL into voluntary liquidation by way of a shareholder's resolution. Mr. Pretlove and his colleague Mr. Mackellar were appointed as liquidators.

[16] Once the former directors of PHRGL discovered what had happened, the bankruptcy proceedings were transferred to New York to be heard by Judge Chapman. She dismissed the case against PHRGL and held the proceedings in respect of ARLG were a nullity. High-Def and LightRay appealed.

[17] District Judge Ramos, who heard the appeal, summarized matters as follows:

“To recap, by mid-August 2017, ARGL had been put into yet another bankruptcy by entities other than its directors or authorized representatives. Moreover, the Chapter 7 Trustee gutted ARGL’s board of directors and replaced it with her nominee, who promptly consented to place it into bankruptcy in Florida... Judge Chapman... could find that Amanat was involved in every aspect of the transaction: he provided the *forum* (by his payment of a retainer to a Miami lawyer, making jurisdiction in the Southern District of Florida proper), the *petitioner* (by hiring High-Def to do work in his apartment), the *petitioner’s lawyer* (by initially paying Aresty’s fees), the *cause of action* (via his failure to pay High-def), the *theory of the case* (by suggesting to High-Def[] that its best chance of getting paid was to initiate an involuntary bankruptcy against PHRGL), and the *funding to prosecute the litigation* (by his relationship with litigation funder LightRay). Moreover, while this had the imprimatur of the Florida Bankruptcy Court, it had all been accomplished *ex parte* because PHRGL was never properly served and hence, knew nothing about what had transpired to date.”

- [18] The judge concluded that there was a *bona fide* dispute as to whether PHRGL owed High-Def monies, so that the bankruptcy order should never have been made. He upheld the finding that the proceedings in respect of ARGL were a nullity. Ms. Calderin had never been validly appointed as trustee in bankruptcy of PHRGL, so could never have had any power over ARGL.
- [19] These were not the only attempts to pursue claims against the hotel chain. In April 2016, someone purporting to act on behalf of Fondinvest Capital SAS (“Fondinvest”) in its capacity as manager of Fondinvest Special Situations Fund GP sought the appointment of liquidators over ARGL. The legal practitioners for Fondinvest subsequently came off the record. Fondinvest denied any knowledge of the proceedings against ARGL.
- [20] In December 2016, Erik Holling (“Mr. Holling”) sought the appointment by this Court of a liquidator of ARGL (case number BVIHC (COM) 197 of 2016). He said he was owed a finder’s fee of \$10.5 million. His application was supported by evidence from Thomas Evans (“Mr. Evans”), who claimed to be owed \$3.36 million and a Mr. Kamel. The latter was acting for BCA International Ltd (“BCA”), who claimed to be owed £120,000 sterling.
- [21] On 27th April 2017 Kaye J (Ag) dismissed the application. He was highly critical of the documentation produced by Mr. Holling, Mr. Evans and Mr. Kamel. He noted at para [41] that “all the debts of the claimed creditors have involved Mr. Amanat in one capacity or another.” The judge held that all the debts were disputed *bona fide*, so that they could not found an application for the appointment of a liquidator.
- [22] On 1st December 2017, Mr. Mackellar and Mr. Pretlove applied *ex parte* to Adderley J (Ag) in this Court to recognize their appointment. By an order of 4th December 2017 (although only entered in July 2019), he directed:

“The appointment of Applicants as Joint Liquidators of [ARGL] by qualifying resolution passed by the sole member of the Company on 9th August 2017 be continued subject to the supervision of the Court.”

- [23] The judge's attention was drawn to correspondence from Mr. Doronin's solicitors, but Mr. Doronin was not represented. The position in law, I hold, is that the application was *ex parte*. It is therefore open to the Court to revisit the order of Adderley J. In particular, I have the power to declare that, notwithstanding Adderley J's order, the appointment of Mr. Mackellar and Mr. Pretlove was a nullity.
- [24] PHRGL issued the application before me for such a declaration on 2nd May 2018. Mr. Stanley QC for PHRGL and Mr. Nader for the liquidators were in agreement that the liquidators at that point were happy to consent to the application. At this point, however, LightRay intervened. It claimed that it had purchased the debts of Mr. Holling, Mr. Evans and BCA. These debts, the judgment of Kaye J had already established, were disputed. It is therefore very doubtful that they gave any standing to LightRay to apply to the Court to uphold Adderley J's *ex parte* order. Nonetheless, the application inevitably resulted in a delay until the matter came before me.
- [25] LightRay did not appear before me. Its legal representatives had come off the record shortly before. Accordingly, I do not need to consider LightRay's standing.
- [26] Instead, when the application was called on the Monday, Mr. Emery of counsel appeared. He said that he had been instructed late on the previous Friday by Mr. Holling, Mr. Evans and Mr. Kamel. They had, he said, taken an assignment (or re-assignment) of the debts which LightRay had purchased. They had filed no evidence and made no formal application to be added as parties. Instead Mr. Emery asked for an adjournment in order that they could present their case in an orderly manner.
- [27] I refused the application for an adjournment. No adequate explanation for the delay in applying had been made. Any adjournment would cause prejudice to ARGL and PHRGL. In addition, in the light of Kaye J's decision, it seemed unlikely that these three gentlemen had any claim which would give them sufficient

standing to oppose the making of the declaration. Further, any prejudice to them was likely to be small. Even if there was any substance to their claim that ARGL was indebted to them, they could pursue those claims in the ordinary way and, once they had recovered a judgment, apply themselves for the appointment of a liquidator.

[28] In the light of the nullification of the US bankruptcy, I find that Mr. Mackellar and Mr. Pretlove were not validly appointed as liquidators of ARGL and that ARGL is not in liquidation. Insofar as Adderley J's order provides for the contrary, I set that order aside as is proper in respect of an *ex parte* order.

[29] I am doubtful that this is a matter of discretion, but, even if I did have a discretion whether to make the declaration that the liquidators were not validly appointed, I would have no hesitation in exercising the discretion in favour of PHRGL. They are completely innocent of the shenanigans of Mr. Amanat and would be gravely prejudiced if the declaration were not made.

[30] In the light of my findings, I grant leave to the liquidators to serve Points of Claim on Ms Calderin and on LightRay to show cause why they should not pay some or all of the professional fees and legal costs of the liquidators.

[31] I consider that both Ms. Calderin and LightRay have submitted to the jurisdiction of this Court. However, if I am wrong about that I would give leave to serve outside the jurisdiction under rule 7.3(7)(a) and (b) of the Civil Procedure Rules. I dispense with the need for compliance with CPR 7.5(1).

By the Court

Registrar