EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS
IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION

CLAIM NO. BVIHC (COM) 197 of 2016

IN THE MATTER OF AMAN RESORTS GROUP LIMITED
AND IN THE MATTER OF THE INSOLVENCY ACT 2003

BETWEEN:

ERIK HOLLING

Applicant

and

AMAN RESORTS GROUP LIMITED

Respondent

Appearances:

Mr David Fisher, Ms Sara-Jane Knock and Mr Niki Olympitis of Withers BVI, Road Town, Tortola, BVI, for the Applicant
Mr Paul Stanley, Q.C., Mr David Caplan, and Ms Allana-J Joseph, of Sabals Law, Road Town, Tortola, BVI, for the Respondent and Mr Vladislav Doronin, an opposing creditor
Mr. Michael Fay, Q.C. of Advocates BVI, for BCA International Ltd and Mr Thomas Martin Evans, supporting creditors

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2017: March 27
April 10, 11, 27

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APPROVED JUDGMENT

NOTE: Copies of the approved final version as handed down may be treated as the approved transcript of the judgment in this case and authentic for the purposes of CPR 62.9(1)(c)(iii); 62.12(2),(3)(b)(ii) and 69A.8.

Application to appoint liquidators – whether alleged debts forming basis of application disputed in good faith and on substantial grounds – whether alleged supporting creditors should be substituted in event debts disputed and application for appointment of joint liquidators refused

JUSTICE ROGER KAYE, Q.C., [Ag.]:

Introduction

[1] This is a disputed application for the appointment of joint liquidators of the above-named company, Aman Resorts Group Limited ("**ARGL**" or "**the Company**"). The basis of the application was that the Company is indebted to the applicant, Mr Erik Holling ("**Mr Holling**") in respect of two debts: first, the sum of US $10.5m under a written agreement which has been referred to as **the Finder's Fee Agreement** dated 1st December 2013 (but seemingly signed on 5th December 2013)[1] and, second (but subsequently abandoned as explained below), a further sum of US $150,000 (plus expenses) under a written agreement known as a Financing Agreement dated 15th October 2015 ("**the Financing Agreement**")[2]. The Company contends that these debts are disputed in good faith and on substantial grounds and accordingly do not found a good basis for the making of an order appointing liquidators under the Insolvency Act 2003 ("**IA 2003**").

[2] The application was made on 23rd December 2016[3] and supported by an affidavit of Mr Holling[4]. It was responded to (in opposition) by an affidavit of Mr Vladislav Doronin ("**Mr Doronin**")[5], a director of the Company and "*interested party*" (for reasons which will appear). This, in turn, was replied to by Mr Holling[6], leading to further rounds of evidence from Mr Doronin[7], from a Mr Thomas Evans ("**Mr Evans**")[8] and a Mr Kamel on behalf of BCA International Ltd ("**BCAI**")[9], the latter two being alleged supporting creditors represented by Mr Fay QC in the sum of $3.36m and £120,000 (sterling) or just under $150,000 (as the USD equivalent) and both of whom served Notices of Intention to Appear[10]. Further evidence was also adduced as to the provenance of certain

1 Hearing Bundle 1, tab 3, pp. 9-12 (henceforth thus: 1/3/9-12).
2 1/3/28-30.
3 1/1/1-3.
4 1/2/4-7.
5 1/9/124-141.
6 1/5/47-55.
7 1/10/142-160 (almost totally repetitive of the first).
8 3/28/680-683.
9 3/25/663-665.
10 3/24/662 (BCAI) and 3/27/679 (Mr Evans).

documents produced in support of, and in opposition to, the application.[11] All affidavits were supported by voluminous documentation not always in any intelligible or chronological order. None of the documents, so far as I understood, were originals, but rather copies. Where the originals were, was never entirely clear.

[3] The hearing of the application first took place on 27th February 2017 when directions for evidence were given. The matter was adjourned to 27th March for one hour on the basis that this was or ought to have been sufficient to dispose of the matter. The Company was then represented by Mr Caplan but since, in the meantime, the evidence had grown to vast proportions there was insufficient time to conclude matters so the hearing was adjourned to 10th and 11th April when the Company was now represented by Mr Stanley, Q.C. The applicant has throughout been represented by Mr Fisher. Mr Fay, Q.C. has, as indicated, represented two supporting creditors, BCAI and Mr Evans.

[4] I was much assisted by counsel throughout and am indebted to them all. The factual background was complex and complicated by the random order in which documents were exhibited. Mr Stanley was particularly helpful, if I may say so, in presenting a detailed written chronology of events with references to appropriate sources in the exhibits.

[5] One curious feature of this case, never really explained, is how the list of persons intending to appear, and some of whom had given notice of such intention (as previously indicated), had grown from four supporting creditors and one opponent interested party (Mr Doronin) at the hearing on 27th March to 13 supporting creditors and the one opponent (i.e. Mr Doronin) on 10th April (see Rules 162-163 Insolvency Rules 2005 **("IR 2005").** In the event the only persons appearing or being represented at the hearings were those indicated above.

The Background

[6] A common thread or person running through the entirety of the history was a Mr Omar Amanat ("**Mr Amanat**"), a former co-investor in the joint venture described below with Mr Doronin, but with

[11] See Bundle 4.

whom he now appears to be at total loggerheads. I have neither heard from nor seen any evidence on behalf of Mr Amanat. The basis of the Company's case was that there is a genuine and substantial dispute, hence I have not been asked to make express findings of fact (beyond determining the issue as to whether I should appoint liquidators or not) nor has any deponent been subjected to cross-examination.

[7] Nevertheless, it is broadly possible to set out the main parameters of events, highlighting the factual areas of dispute.

[8] The broad picture that emerges is as follows. Some time at the end of 2011 or beginning of 2012 a number of apparently super luxury resort hotels in various locations around the world (known generally as the Aman Resorts) owned by a company called Silverlink Resorts Ltd ("**Silverlink"**), itself a wholly owned subsidiary of DLF Global Hospitality Ltd (an Indian company) ("**DLF**"), came up for sale. Mr Holling was a property broker, specialising in hotels. He had some years previously met Mr Amanat and thought that the latter might be interested. He also knew a Mr Karan Singh (with whom Mr Holling seems subsequently to have teamed up) who knew the senior officers of DLF. He arranged meetings between Mr Amanat and DLF and between Mr Amanat and the founder of Aman Resorts, a Mr Adrian Zecha.

[9] The negotiations for the acquisition of the Aman Resorts seem to have proceeded rather slowly and involved a number of different persons or entities, the role of each of whom or which is not entirely clear on the evidence before me apart from the fact that they all seem to have had some form of contact with Mr Amanat. Mr Holling seems to have been advising Mr Amanat whilst Mr Singh (Mr Holling's ostensible "*partner*") seems to have been on the other side of the fence acting for DLF. Others were also involved. Thus there was Mr Holling, Mr Singh, a Mr Bhavin Shah, an entity called Surf Hotels Pte Ltd, Mr Zecha, not to mention various lawyers and others.

[10] By the autumn of 2013 Mr Amanat had resolved to acquire Aman Resorts using a company (to be formed) as the acquisition vehicle, namely ARGL. ARGL was incorporated on 15th November 2013 as an off-the-shelf BVI company. The authorised share capital was 50,000 shares with no par value of which only one was issued and acquired following incorporation by a single shareholder,

Manaman Ventures Pte Ltd ("**Manaman**"), which was wholly owned and controlled by Mr Amanat. The first director of ARGL was Ogier First Director (BVI) Ltd. Ogier Fiduciary Services (BVI) Ltd were also the initial registered agent.

[11] Almost immediately on and from incorporation the disputed territory commences. According to Mr Holling and documents – or copy documents (see above) – produced by him, Mr Amanat was, on 15th November 2013, first appointed director of ARGL by a resolution of Manaman – signed by Mr Amanat - pursuant to a shareholders' agreement with the Company (which I have not seen), and then, second, by a resolution of Mr Amanat (as director of ARGL) he appointed himself Chairman, Chief Executive Officer and Agent. A third resolution on the same day (this time again by the sole shareholder, Manaman) then removed Mr Amanat as director and appointed a Mr Gregory Stuppler and Mr Zecha as directors and a fourth resolution on 1st December 2013 by Manaman (signed again by Mr Amanat) approved the appointment of Mr Holling and the Finder's Fee Agreement.[12]

[12] Also on 15th November 2013, according to Mr Evans, he, or rather a company called FHF Securities Ltd ("**FHF"**), (expressed in the agreement hereafter mentioned to be "*a UK limited company*") entered into some kind of financial services agreement in writing ("**the FHF Agreement**") with ARGL[13]. It was signed by Mr Evans as managing director of FHF and by Mr Amanat as Chairman and Authorized Person (but not as director) of ARGL. This agreement was terminated by written notice given by Mr Amanat as Chairman of ARGL dated 30th January 2014[14]. Mr Evans's case is that this agreement entitled him to claim $3.36m from ARGL as fees due under the FHF Agreement.

[13] In December 2013 a number of alleged events took place, in no particular order (save as indicated). First, a further shareholder's resolution signed by Mr Amanat authorised Mr Amanat (as "*Chairman of the Board and Chief Executive Officer*") to enter into an agreement with Mr Holling (said to be attached, but it was not) appointing him as advisor to the Company and authorising a

12 See 1/6/77-78, 97, 99, 101-102, 106; 2/11/253, 262.
13 3/29/685-690.
14 3/29/694-695.

3% Finder's Fee on the purchase price of Silverlink if the Company's bid was successful.[15] Second, Mr Holling maintains that he and ARGL then entered into the Finder's Fee Agreement which forms the basis of his first alleged debt due from the Company. It was dated 1st December 2013, but apparently signed by both signatories, Mr Holling and Mr Amanat (the latter as "*Director*"), on the 5th December.[16]

[14] On 2nd January 2014, a share purchase agreement was entered into between ARGL and DLF for the purchase of the shares of Silverlink by ARGL for $358m. According to Mr Holling his fee thereby became due under the Finder's Fee Agreement. Later that month, on 28th January, a Settlement Agreement was entered into between Mr Holling and Mr Singh on the one hand and ARGL on the other (apparently signed by Mr Amanat as sole director of ARGL) whereby ARGL admitted liability to Mr Holling and Mr Singh under the Finder's Fee Agreement in the sum of $10.5m and agreeing to grant a "*confession of judgment*" in their favour but which they agreed not to enforce unless and until certain events (said to be fulfilled).[17] (The agreement was not, to say the least, elegantly drafted.) According to documents relied on by Mr Holling, on the same day, Mr Stuppler and Mr Zecha resigned as directors of ARGL and were replaced by Mr Amanat.[18] This latter event (and supporting documentation) is disputed by ARGL and Mr Doronin. Also on the same day ARGL signed (by Mr Amanat as director) an affidavit in the New York Supreme Court as a confession of judgment for $10.5m in favour of Mr Holling, but not (despite the wording of the Settlement Agreement) Mr Singh.[19] Again, the genuineness or validity of this document is relied on by Mr Holling but disputed by the Company and Mr Doronin.

[15] According to documents obtained by Mr Doronin, as I understand it, from the Company's now registered agent, a share purchase agreement was entered into on 31st January 2014 between Peak Hotels and Resorts Group Ltd, a BVI company ("**PHRG**"), and Manaman for the sale by Manaman and purchase by PHRG of the issued share capital of ARGL (consisting only of one issued share) for $1.[20] This document identified the directors of ARGL in Schedule 1 (which does

15 1/6/106.
16 1/3/9-12.
17 1/3/13-22.
18 1/6/96-97.
19 1/3/23-24.
20 2/11/547-564.

not appear to have been expressly referred to in the written agreement) as Mr Zecha and Mr Stuppler. The agreement was signed by Mr Amanat as director of PHRG and by him as director of Manaman. On the same day, according to Mr Doronin and his documents, Mr Stuppler and Mr Zecha resigned as directors of ARGL and were replaced by a Mr Tavakoli, Mr Amanat, Mr Doronin and a Mr Djanogly.[21] This seemingly was all pursuant to a shareholders' or joint venture agreement between Peak Hotels and Resorts Ltd ("**PHRL**"), another company as I understand it substantially owned and controlled by Mr Amanat, Tarek Investments Ltd ("**Tarek**"), and PHRG (all of them being BVI companies). This agreement was intended to regulate the operation of a luxury hotels and resorts business carried on at Aman Resorts between the shareholders or intended shareholders of PHRG, namely PHRL (Mr Amanat) and Tarek (largely owned by family trusts of Mr Doronin).

[16] On 8th February 2014, according to Mr Holling, the agreement for the purchase by ARGL of Silverlink for $358m (above) was completed. Thus, PHRG became the owner of ARGL and via ARGL of Silverlink and the Aman Resorts' business on the terms of the joint venture agreement above-mentioned. Finance was largely provided by a company called Pontwelly Holding Company Ltd ("**Pontwelly**"), also owned by the Doronin family trusts, secured against the shares of Silverlink.

[17] This was rapidly followed by an invoice emailed from FHF to ARGL at a New York address of Mr Amanat at Peak Venture Partners (apparently another Amanat entity) claiming $3.36m under the FHF Agreement in spite of the fact that the benefit (and burden) of the FHF Agreement (and debt) had apparently been assigned to Mr Evans on 30th January that year.[22]

[18] According to the register of directors of ARGL produced by Mr Doronin, on 9th April 2014 further shuffles in directors' appointments took place: Mr Tavakoli and Mr Amanat (both of whom according to this register had been appointed on 31st January) resigned and were replaced by a Mr Eliasch and a company called Carpentaria Management Services Ltd ("**Carpentaria**"), another

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21 2/11/262.

22 3/29/696-697, 702-705.

company apparently owned and controlled by Mr Amanat.[23] Carpentaria seems to have remained as director of ARGL until 10 March 2016 (Mr Doronin says Mr Amanat retired from the board of ARGL on 4 September 2014, but this may be a mistake), Mr Eliasch appears still to be a director of ARGL along with Mr Djanogly and Mr Doronin.

[19] Shortly after the completion of the transaction (and following other attempts at restructuring and financing the joint venture, not otherwise material for present purposes) relations between Mr Amanat and Mr Doronin seem to have rapidly broken down. Ultimately the joint venture collapsed in mutual recrimination, the resorts business (in the form of Silverlink) passing to Pontwelly following default in repayment and thereafter to a further company owned by Mr Doronin's family trusts.

[20] Meanwhile, in the autumn of 2014 following the breakdown of relations between Mr Amanat and Mr Doronin there then commenced and continued until March 2016 a lengthy and bitter shareholders' dispute by way of hard-fought litigation in the High Court, Chancery Division, in London (there was an express English jurisdiction clause in the shareholders' agreement) between PHRL and Tarek with claims, counter-claims, and applications. Essentially, this litigation (which was referred to as "**the London Litigation**") was between Mr Amanat on the one hand and Mr Doronin on the other but also involved many others including PHRG, Mr Eliasch, and Mr Amanat.[24] The London Litigation was ultimately settled in March 2016 with the claims of PHRL (and thereby ARGL) being dismissed. Nevertheless, the bitterness created by the dispute seems to exist down to today. Indeed, chief among Mr Doronin's complaint is the assertion that the attempts by Mr Holling, Mr Evans, BCAI and others to bring about the liquidation of ARGL is an attempt to re-run the London Litigation against him but this time on behalf of ARGL. This he not only bases on the existence of the London Litigation but also on a previous (unsuccessful) attempt by Mr Amanat (directly or indirectly) to liquidate ARGL in factually similar circumstances to the present (presumably in order to put his - Mr Amanat's - own appointed liquidators in charge) as well as what he describes as a "*fraudulent*" and unsuccessful attempt to re-litigate the London Litigation in Chapter 11 proceedings in New York (to which I return later, below).

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[23] 2/11/262-263.

[24] See for example judgment Henderson J at 2/11/231-245.

[21] To return to the main narrative, the next main event for present purposes was the application in September 2015 (on short notice) by PHRL for (and the subsequent granting of leave by Leon J on 2 October 2015 – entered on 15 October 2015) leave under section 184C of the Business Companies Act 2004 ("**BCA**") to bring proceedings in the name of PHRG against ARGL in the London Litigation, to amend the Particulars of Claim in the name of and on behalf of ARGL and also to bring the Chapter 11 proceedings above-mentioned in New York "*and for that* [latter] *purposes …. to take such actions, file such papers, give such testimony and (either by itself or by* [Carpentaria] *… to execute any necessary or appropriate agreements and commitments …. for ARGL and on ARGL's behalf, in connection with such* [Chapter 11] *proceedings …*". Whilst I have seen a copy of Leon J's order[25] in this respect, I have not seen the application or any supporting evidence nor any transcript of the proceedings.

[22] This led to a resolution apparently dated 15th October 2015 and apparently signed by a Mr Sullivan, on behalf of Carpentaria, appointing Mr Holling as financial advisor and fundraiser for the Chapter 11 proceedings[26]. This in turn also led to a document (or documents) said to form the basis of the second debt, namely the Financing Agreement[27] itself supplemented by a document called a "*First Addendum to ARGL Agreement – Holling*" also expressed to be made on 15th October 2015 and signed by Mr Holling and Mr Sullivan (again as a director of Carpentaria and ARGL's authorised representative) and under which Mr Holling claims a fee of $150,000[28]. (I have not seen the document to which it was expressed to be an addendum.) The trouble with this document and indeed the entire agreement was that Mr Holling later produced a second, but totally different version of the same alleged supplement this time called a "*First Addendum to ARGL Work Fee – Holling*" made on 12th October 2015 under which ARGL appointed Mr Holling to locate businesses to acquire ARGL for a fee of 3% of the transaction value (as defined)[29]. This document was also signed by Mr Holling and Mr Sullivan as a director of Carpentaria and ARGL's authorised representative. The total inconsistencies between these two documents (they were in fact two

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25 1/6/112-113.
26 1/6/110-111.
27 1/3/28-30.
28 1/3/31-33.
29 See para. 25 of Mr Holling's second affidavit at 1/5/53 and 1/6/114-117.

separate documents) led Mr Fisher, on behalf of Mr Holling to abandon – in my judgment, rightly – his case on the Financing Agreement.

[23] In the meantime, on 3rd October 2015, almost immediately following Leon J's order (above), BCAI entered into the alleged written consultancy agreement forming the basis of their claim against ARGL consequent also on discussions (referred to in the agreement) between Mr Kamel and Mr Amanat under which BCAI was to be paid a retainer of £20,000 (sterling) per month ("**the BCAI Consultancy Agreement**")[30]. This agreement was signed by Mr Kamel for BCAI and Mr Sullivan again on behalf of Carpentaria as authorised representative of ARGL. Carpentaria, it will be recalled, had been appointed director of ARGL on 9th April 2014 and seems to have continued as such to 10 March 2016 (above). The agreement, according to Mr Kamel's evidence, was for the appointment of BCAI as consultant for the purposes of raising finance in connection with the Chapter 11 proceedings for an initial term of 6 months, and then on an ad hoc basis, at a retainer fee £20,000 per month at least for the first 6 months. The terms of the agreement, although vague in the extreme, are not entirely inconsistent with this.

[24] The history continues with demands for payment by the supporting creditors, the eventual settlement of the London Litigation, and the collapse of the joint venture but the foregoing represents, as I say, the salient background for present purposes. It only remains to add that the Company, I am told, has or appears to have no assets.

The Legal Framework

[25] The legal framework within which the issues before me rest are not in dispute and can therefore be stated shortly so far as is relevant in the present case.

[26] First, the court may appoint a liquidator of a company on the application of a creditor if the company is insolvent (IA 2003, sections 159, 162). The fact that a company has no assets is not a reason of itself for refusing to appoint a liquidator (section 167). Otherwise the court may make a variety of orders on the hearing of the application (see section 167) including substitution of the

[30] 3/25/667-673.

applicant (see section 166). Second, insolvency may be proved by a number of means including inability to pay debts as they fall due (see sections 1, 8). ARGL appears to be insolvent (though this was not factually established and remains a matter of some dispute). That is not, however, the end of the matter because, third, in order to make the application, the applicant (in this case) must be a creditor, that is a person having a claim against the debtor (in this case ARGL) whether by assignment (as in Mr Evans's case) or otherwise that would be an admissible claim in the liquidation of the Company (sections 1, 9). Fourth, it is well settled that a creditor (or alleged creditor) whose debt is disputed in good faith and on substantial grounds will not have the required standing as a creditor to secure a liquidation order (the burden being on the debtor to establish that there is a genuine dispute): see, for example, **Jinpeng Group Limited v Peak Hotels and Resorts Ltd** BVIHCMAP 2014/0025 and 2015/0003 (Court of Appeal delivered 8 December 2015, unreported) where Webster JA (Ag) followed the leading case in this jurisdiction of **Sparkasse Bregenz AG v Associated Capital Corporation** (BVIHCVAP2001/0010). There Sir Dennis Byron CJ following established authority from England, said this:

> "If the existence of the debt on which the winding up petition is founded is disputed on grounds showing a substantial defence requiring investigation, the petitioner would not have established that he was a creditor and thus would not be entitled to present the petition, accordingly the presentation of such a petition would be an abuse of the process of the Court."

The Allegations Against the Company

[27] Mr Fisher, on behalf of Mr Holling, and Mr Fay on behalf of Mr Evans and BCAI put up, to a certain extent, a united front. With the agreement of Mr Stanley, on behalf of ARGL, their approach was that if Mr Holling's claim got knocked out Mr Fay would apply for Mr Evans and BCAI to be substituted as applicant for the liquidation order; hence it would be sensible, if not necessarily procedurally formal, for the court to give a determination on all three claimants on the basis, indicated by Mr Fay, that he would not intend to adduce any further evidence on any such application beyond that already before the court. If the court indicated adversely to Mr Evans and BCAI they would not, accepted Mr Fay, apply, in the event Mr Holling's claim also fell away, to be substituted. That seemed and seems to me a most helpful and constructive approach by all concerned.

[28] Having abandoned his case on the Financing Agreement of 15th November 2013[31], Mr Fisher puts his case on the Finder's Fee Agreement of 5th December 2013 with attractive simplicity. He submits the written agreement is signed by Mr Holling and by Mr Amanat for ARGL. In response to the Company's challenge that Mr Amanat had no authority at the time to execute the agreement on behalf of ARGL he submits that Mr Amanat's authority derived from his position as owner and controller of the then sole shareholder, Manaman, from his appointment by that shareholder as sole director of ARGL in accordance with ARGL's Articles of Association and the statutory requirements in that behalf (BCA, sections 112-113), and from Mr Amanat's own appointment, again in accordance with the Articles, of himself as Chairman of the Board and CEO and as authorised agent of ARGL[32]. The fact that he then resigned and was replaced by Mr Stuppler and Mr Zecha[33] is, in effect, neither here nor there, nor that he described himself in the agreement as "*director*". He had been appointed as Chairman and CEO and authorised agent of ARGL which offices he did not relinquish. Moreover, he was the owner and controller of the sole shareholder and as such approved the proposed transaction with Mr Holling.[34]

[29] The debt arising under the Finder's Fee Agreement of $10.5m was then confirmed by the Settlement Agreement and confession of judgment of 28th January 2014.[35] On this day, Mr Amanat was reappointed by himself (acting as shareholder through Manaman) as sole director and removed Mr Stuppler and Mr Zecha[36] and thus, argues Mr Fisher, had all the relevant authority.

[30] As to the arguments of the Company and Mr Doronin, these quite simply, submitted Mr Fisher, are and amount to unacceptable clouds of objection[37], matters of speculation, prejudice, and conspiracy theories and do not detract from the evidence of Mr Holling. They do not, submits Mr Fisher, amount to a genuine dispute on substantial grounds.

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31 1/3/9-12.

32 See resolutions at 1/6/99-100 and 1/6/77-78.

33 Resolution at 1/6/101-102.

34 Resolution at 1/6/106.

35 1/3/13-22 and 1/3/23-24.

36 1/6/103-104.

37 See per Norris J in **Angel Group Ltd v British Gas Trading Ltd** [2013] BCC 265 at para. 22(g).

[31] Mr Fay, for his part, relies on the FHF Agreement of 15 November 2013[38] so far as Mr Evans is concerned. He too accepts however that the same point arises in Mr Evans's case as with Mr Holling. If, when the FHF Agreement was executed, Mr Amanat did not have the authority claimed in the document (Chairman and Authorized Person) on behalf of ARGL, then his case too must fall away.

[32] So far as BCAI is concerned, Mr Fay here relies on the BCAI Consultancy Agreement[39] of 3rd October 2015 under which BCAI's consultancy services were retained at £20,000 per month for the initial period of 6 months. The issue here rather is whether the BCAI Consultancy Agreement was something authorised by Leon J's order of 3 October 2015. Mr Fay accepts that there is no evidence of BCAI providing any actual consultancy services but submits that the agreement was and is entirely consistent with and in accordance with the order made by Leon J according to the terms as set out above.

[33] Subject to the above points, Mr Fay supports Mr Fisher.

The Company's Response

[34] Mr Caplan at the first substantive hearing and, to some extent, though more muted, Mr Stanley at the second, had a more difficult task. In substance, they sought to persuade me that the debts were indeed, all disputed in good faith and on substantial grounds, sufficient that no liquidation order should be made based on the alleged debts whether of Mr Holling, Mr Evans or BCAI.

[35] In brief, they had three points.

[36] First, the agreements upon which the claims were based were all not admitted: they were neither genuine, nor truthful, nor were any of the key resolutions and documents relied on by Mr Holling, Mr Evans, and BCAI in, or appeared to be in, the possession of the Company or its agents or

[38] 3/29/685-690.
[39] 3/25/667-673.

lawyers and were in the case of the resolutions quite inconsistent with the resolutions and registers the Company or its agents did have.

[37] Second, in so far as they were signed by or involved Mr Amanat they were signed without proper authority and in circumstances that were to say the least, highly suspicious given the background dispute between Mr Doronin and Mr Amanat whom Mr Doronin characterised as a "*serial fraudster*" and as such called for investigation. Thus, for example, the BCAI Consultancy Agreement, although signed by Mr Sullivan on behalf of Carpentaria, was only entered into after meetings between Mr Kamel and Mr Amanat as that agreement made clear (meetings moreover which must have taken place, it was reasonable to infer, before Leon J's order).

[38] Third, in any event the BCAI Consultancy Agreement was not within the express or even implied ambit of Leon J's order.

Discussion

[39] There is no doubt but that the transactions with which I am directly concerned in this case, involving Mr Holling, Mr Evans and BCAI, form, at least factually, part of a complex and factually disputed backdrop or scenario. The provenance and dates of various documents, appointments, resignations and other matters are challenged, disputed, asserted to be the truth or put in some doubt. ARGL has been struck off (for lack of registered agent) and revived.

[40] Indeed, it is the very nature and existence of the various documents that gives rise to some cause for concern and enquiry. Some are produced by Mr Holling, Mr Evans and BCAI but many, including many of the crucial agreements and resolutions relied on by Mr Holling, Mr Evans and BCAI, do not appear to be in the possession of the Company or its agents though they, or some of them (it was not clear which) may have emanated from the Company's previous lawyers.

[41] Moreover, all the debts of the claimed creditors have involved Mr Amanat in one capacity or another. Even BCAI who relied on the fact that Mr Sullivan of Carpentaria had signed the BCAI Consultancy Agreement can only have done so because, as the agreement itself records as

mentioned above, it reflected meetings between Mr Kamel and Mr Amanat in London. It is plain having read the judgment of Henderson J in the London Litigation that the judge was not impressed with Mr Amanat (to say the least). Like Banquo's Ghost he has stalked through the portals of this Court and into this case but no evidence has appeared from him at all. Mr Fisher and Mr Fay submit, with some justification, that the allegations against Mr Amanat are all prejudicial, speculative, and tantamount to mud-slinging. The Court should be, and is, slow to characterise a person as a fraudster lightly, particularly given, as here, the history of very hostile litigation between the main parties. Nevertheless, in the context of the case with previous failed attempts to liquidate ARGL or put it into Chapter 11, in the context of a complex commercial history and directorial and other appointments requiring as it seems to me at least some investigation and explanation, Mr Amanat's history and his involvement are, in my judgment, important factors to consider.

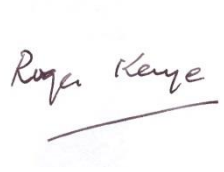
[42] Despite, therefore, the apparent absence of assets owned by ARGL, and its apparent (albeit disputed) insolvency, I am satisfied that there are indeed genuine and substantial disputes surrounding all and each of the alleged debts sufficient to cast doubt on the standing of the alleged creditor in question to obtain a liquidation order. These and the historical context in which they occur, particularly involving as all the disputed transactions seem to, the involvement of Mr Amanat, call, in my judgment, for the forensic scrutiny of, and investigation at, a trial. The fact that Mr Holling popped up with two different versions of the alleged same agreement or rather addendums thereto (forcing him to abandon the case in respect of the Financing Agreement) was, to my mind, most telling in the context where the Company was challenging the veracity of other documents. Mr Holling's claims (and those of Mr Evans) rest, as is accepted, on the genuineness of whether or not Mr Amanat had proper authority to execute the documents in question on behalf of ARGL at the material times. Any company which purports to appoint a person director and then removes him on the same day (but then expects the court to accept he has continued as Chairman, CEO, and authorised agent), particularly in the context of this case, seems to me to be expected to be required to explain fully the circumstances and reasons for so doing. No such explanation has been forthcoming.

[43] In short, I accept the submissions and arguments of Mr Stanley.

[44] Further, I am by no means satisfied that the BCAI Consultancy Agreement supports a genuine debt. This too involved Mr Amanat as stated. It followed the day after the order of Leon J. I do not accept that it was the kind of financing agreement contemplated by the terms of the judge's order given I have seen none of the application or supporting papers or seen any transcript of the hearing. I do not even know whether the learned judge was referred to the meetings between Mr Kamel of BCAI and Mr Amanat and whether or not he was even told that the Consultancy Agreement was contemplated. Mr Fay submits that the raising of finance for the Chapter 11 proceedings was and is a necessary implication of the terms of the judge's very wide order. It may be, but it is something I would have expected to have been specifically mentioned and recorded in the order given that the entire implication of Mr Fay's submissions (and Mr Fisher's prior to abandonment of that part of his case) was that without such an order the BCAI Consultancy Agreement would not have been otherwise valid and enforceable against the Company. It was not so recorded and the Company having challenged and disputed the genuineness of the agreement, in my judgment it has shown that there is a genuine dispute on substantial grounds sufficient to deprive BCAI of standing. Accordingly, I would not have allowed an application for substitution of BCAI for Mr Holling were it to be made on the present material before me.

Conclusion

[45] The application will accordingly stand dismissed.



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Justice Roger Kaye QC

Commercial Court Judge (Ag)

27 April 2017