

JERSEY / JUDGMENT

JSC Commercial Bank Privat Bank v St John Ltd and Ors [2021] JRC 189 (15 July 2021)

[2021] JRC 189

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judgment

the commissioner:

Introduction

1. The Representor (sometimes referred to herein as the "Company") is a Ukrainian bank which is alleged to have been subject to large scale fraudulent schemes prior to its nationalisation in December 2016. The schemes had resulted allegedly in the unlawful misappropriation of significant funds by its ultimate owners, Igor Kolomoisky ("Mr Kolomoisky") and Gennadiy Bogolyubov ("Mr Bogolyubov ").
2. The First Respondent was incorporated in Jersey as a private company on 22 nd April 1996. It was dissolved on 28 th February 2014 and subsequently reinstated on the application of the Representor on 3 rd February 2020 in circumstances set out in more detail below. Allegedly, it received significant funds that had been misappropriated from the Representor.
3. The Second Respondent is an independent trust company established in Jersey in 1985 and regulated by the Jersey Financial Services Commission for the conduct of trust company business in Jersey. It was one of two shareholders in the First Respondent at the material times and acted as corporate secretary of the First Respondent and provided corporate services to it as set out in more detail later in this judgment. Until 22 nd May 2020, it provided the First Respondent with a registered office.
4. The Third Respondent was also a shareholder in the First Respondent at material times.
5. On 18 th December 2019, the Representor had commenced legal proceedings against a number of defendants, including the First Respondent, before the District Court in Tel Aviv, Economic Department, seeking recovery of the allegedly misappropriated funds ("Israeli proceedings"). Other defendants to those proceedings included Mr Kolomoisky and Mr Bogolyubov , a Mr Kartashov , said to be a close associate of Messrs Kolomoisky and Bogolyubov , and Mr Alexander Ratner, also one of their associates, and a person who acted as sole director and authorised signatory of the First Respondent at relevant times. Pursuant to the Rules of Civil Procedure in Israel, the Representor was required to serve the originating process and related papers ("the Israeli

claim documents") on each of the defendants to those proceedings. Details of what transpired appear below. 6. By the present proceedings, the Representor sought the following declarations: (i) The Second Respondent's consent to act as corporate services provider to the First Respondent (including as registered office provider) survived the dissolution and subsequent reinstatement of the First Respondent. (ii) The Burrard Street address (where the Second Respondent carries on its business) was the registered office of the First Respondent until 22 nd May 2020. (iii) The Israeli claim documents were served on the First Respondent in accordance with Article 72 of the Companies Law and Rule 5 of the Royal Court Rules 2004 as amended. 7. The Court sat on 5 th March to hear argument in connection with the Representation. At that hearing, the Representor sought and obtained leave to amend the declaration sought at paragraph 6(ii) above by removing the phrase "until May 22nd 2020". The Court made the declarations set out in (ii) as amended and (iii) above with reasons reserved. This judgment contains those reasons. The facts 8. We received four affidavits sworn on behalf of the Representor and two affidavits sworn by Ms Nicola Hodge on behalf of the Second Respondent. We also received an affidavit sworn by the office manager of Messrs Walkers concerning service of the Israeli claim documents. Finally, we were presented with some extensive correspondence passing between Messrs Bedell Cristin and Messrs Carey Olsen. It does not appear to us that there is a significant factual dispute. 9. The Second Respondent previously provided corporate services to the First Respondent, including the provision of a registered office, the company secretary, directors and nominee shareholders under a declaration of bare trust. The directors provided by the Second Respondent all resigned on 22 nd April 1996, having held office for that day only. The Register of Officers showed that the Second Respondent was appointed as secretary on 22 nd April 1996 and had not resigned at the material times. 10. The First Respondent was dissolved on 28 th February 2014. The Second and Third Respondents take the approach that as a result, their involvement with the First Respondent terminated at that date and they no longer had any obligations in this respect. 11. On the commencement of the Israeli proceedings, it became apparent to the Representor that it would be necessary to reinstate the First Respondent in order that the Israeli proceedings could be properly served. The reinstatement was ordered by the Royal Court on 3 rd February 2020 on an ex parte application of the Representor, without notice to any of the Respondents. Under delegated powers, the Greffier Substitute issued an Act of Court on 3 rd February 2020 granting the relief sought by the Representor, namely the reinstatement of the company. The Act of Court states, inter alia : "Wherefore the Representor prays as follows:- 1. that the Court do make an order pursuant to Article 213 of the Companies (Jersey) Law 1991 (as amended) declaring the dissolution of the company to have been void; 2. that the company be restored to the Register of Companies upon filing a copy of the order made by this honourable Court with the Registrar of Companies; and Upon reading the said Representation, the Court granted the prayers thereof." 12. The Act of Court was sent by the Greffier to the Jersey Financial Services Commission Registry by email and the original Act of Court was filed with the Registry on th February 2020 at which point the First Respondent was restored to the Register of Companies. 13. The dissolution of the First Respondent took place pursuant to a

meeting of Mr Ratner as sole director on 26 th February 2014 at which the meeting noted that the company had no assets or liabilities. It was resolved to issue a Statement of Solvency to that effect and propose to the shareholders a summary winding up. The Special Resolution was passed on 26 th February by resolving that the business should be wound up summarily and an accompanying Statement of Solvency stating the company had no assets and no liabilities was sent to the Companies Registry at the Jersey Financial Services Commission which ordered the dissolution of the company on 28 th February 2014. 14. On 10 th February 2020, the Companies Registry at the Jersey Financial Services Commission wrote to the company secretary of the First Respondent at 9 Burrard Street to confirm that the Registry had received and registered the Act of the Royal Court dated 3 rd February 2020 ordering that the First Respondent be restored to the Register of Companies with effect from that date. The Companies Registry letter concluded that "therefore the private company may resume its existence as if it had never been dissolved" . A consent was granted by the Registry under Article 2 or 5 of the Control of Borrowing (Jersey) Order 1958 as amended to the First Respondent to issue an unlimited number of shares. That consent was granted subject to a number of conditions. 15. On 12 th February 2020, the Second Respondent received from Messrs Walkers a copy of a letter addressed to the First Respondent by the Companies Registry dated 28 th January 2020 confirming that the Jersey Financial Services Commission had no objection to the restoration of the Company to the Register. The JFSC Registry wrote directly to the First Respondent at the Second Respondent's address on 10 th February 2020 confirming that outcome, this letter being received on 12 th February 2020. Accordingly, it was on the latter date that the Second Respondent first was notified that the First Respondent had been reinstated. 16. Advocate Pallot, instructed by the Second Respondent, communicated with Messrs Walkers, then acting for the Representor, by email dated 25 th February 2020. The thrust of his email was that the Second Respondent did not consent to the reinstatement of the company, had received no prior notice of any application to reinstate it, was not convened to the proceedings and did not possess any information in respect of the application to reinstate save for the standard form documents which had been forwarded to it by Walkers. The Second Respondent's position was that it did not agree to have placed back upon it the duties and obligations of a regulated third party such as to require it to provide services which it had previously provided prior to the First Respondent's dissolution. If that were the intention, then either the Second Respondent should have been given notice of the application and consented, or have the opportunity of making Representations. The Second Respondent's position was that it should be indemnified by the Representor for all matters arising out of the reinstatement, and that as its services to the First Respondent were terminated on dissolution in 2014, the Second Respondent was not in possession of any instructions in respect of the First Respondent nor of any other party with an interest in and/or control of that company. 17. Advocate Sanders responded on behalf of the Representor on 25 th March to take issue with that approach. In his view, the effect of reinstatement was to declare the dissolution void as if it had not taken place, and therefore the position of the First Respondent reverted to what it was at the time of its dissolution in 2014 including with regard to the location of its registered office. The

Second Respondent was the company's registered office provider and therefore continued to be the company's registered office. The application was made for reinstatement by a creditor. This was an administrative matter, and it was entirely appropriate for the application to have been made ex parte . Finally, Advocate Sanders indicated that no indemnity was given by the Representor as had been requested. 18. Subsequently, Messrs Bedell Cristin were instructed by the Representor. Messrs Carey Olsen contacted Advocate Cadin on 21 st May to reiterate that the Second Respondent had no intention of defeating any valid claims against the First Respondent but it was concerned about the reinstatement of its obligations as a provider of regulated services. It was pointed out that the law and practice regarding the obligations of corporate services providers vis a vis the prevention of money laundering and combatting the financing of terrorism had developed significantly. The Second Respondent sought to ensure it could not be put in a situation where it would be in breach of regulatory or criminal obligations without having any control of the circumstances surrounding such a breach. In those circumstances it considered that the procedure for reinstating dissolved companies as described by Messrs Walkers and in the authorities did not appear to take such considerations into account. 19. On 13 th May 2020, Messrs Walkers had caused the Israeli proceedings to be served on the First Respondent at 9 Burrard Street, its registered address. The preceding day, apparently two complete copies of the Israeli claim documents had been delivered to 9 Burrard Street by international post. On 29 th May, Messrs Bedell Cristin, in a letter to Advocate Pallot, referred to this service of documents concluding "Please can you confirm by return (and within three working days) that the Israeli papers have been forwarded by your client to the appropriate person/s for the company in accordance with the records your client will no doubt still hold in that regard" . This was followed up by an email from Messrs Bedell Cristin to Messrs Carey Olsen on 8 th June referring to that letter and seeking confirmation that the Israeli claim documents had been appropriately forwarded. 20. In the interval between service on 13 th May and the correspondence just mentioned, the Second Respondent filed a notice on 22 nd May 2020 with the Jersey Financial Services Commission, confirming that it did not authorise its premises to be the registered office of the First Respondent. That notice could not and did not affect the validity of service of documents served previously, or as we shall see later, of documents served until after the Registrar of Companies registered a change of address for the First Respondent. 21. It appears from subsequent correspondence that there was a telephone conversation between Advocate Pallot and Advocate Cadin on 10 th June. At all events, by letter of 17 th July, Messrs Bedell Cristin wrote to Advocate Pallot with a heading to its letter "Service on St John Limited ("the Company")". The letter went on to confirm that on 29 th May, proceedings in Israel had been instituted and these had been validly served on the company at its registered office on 12 th May (by international post) and 13 th May (by hand delivery). It was said that during the course of the conversation on 10 th June 2020, Advocate Pallot had confirmed that his client had received the Israeli claim documents as served by international post and by hand delivery. The purpose of this letter of 17 th July was said to record in writing the oral confirmation during the conversation of 10 th June that Advocate Pallot's client had received the Israeli claim documents in the manners

described. 22. Advocate Pallot responded by an email the following day taking issue with the summary of the call of 10 th June. Although the email is not as clear as it might have been, it is in context sufficiently clear that Advocate Pallot was distinguishing between his client and the First Respondent. He said, for example, " My client is clear that no authorisation has occurred in respect of the use of its address as the registered office of the Company at any time after the 2014 dissolution". He concluded his email with this statement: "It is right to record that some papers have been delivered to my client's address. My client has no idea what those papers are, has not opened or read those papers, does not know why those papers have been delivered to its address, denies that it has any obligations in respect of those papers, has not and will not send those papers to any person and has not undertaken, nor will it, any task in respect of those papers." 23. By their response of 24 th July 2020, Messrs Bedell Cristin reiterated that Advocate Pallot's client had been served in accordance with Article 72 of the Companies (Jersey) Law 1991 (the "Companies Law"). As to the last paragraph of Advocate Pallot's email, it was said that, in the telephone conversation on 10 th June, Mr Pallot had confirmed that his client had attempted to contact its previous client contact in respect of the First Respondent but had not received any response. If there was a misunderstanding as to the identity of Advocate Pallot's client, given the statement in the letter that his client had been served, it is then compounded by the last paragraph of Messrs Bedell Cristin's letter of 24 th July 2020 which stated: "Given the inconsistency between your correspondence and the statement expressly made by you in the telephone call, please can you confirm in writing within three business days of this letter the steps your client has taken to contact and/or provide the Israeli proceedings to an appropriate person for the Company and the outcome of such steps." (Emphasis added) 24. The confusion was not assisted by Advocate Pallot's response of 19 th August 2020: "Receipt of your letter dated 24th July is acknowledged. I have been on leave. Nothing in your self-serving letter, no doubt sent for the purpose of putting it before a Court to try and assert that papers have been validly served, changes the bare fact that the purported reinstatement of this company has been attempted improperly, that Lutea has not consented to (nor been given notice of) the attempt to reinstate and at no time since the company was dissolved in 2014 has it had any valid registered office. Accordingly it cannot have been, and it has not been, properly served with anything." 25. If Advocate Pallot was acting only for the Second Respondent, it was unnecessary and provocative to state that the First Respondent had not been properly served with anything. We have no doubt that in the correspondence which we have just summarised, there was insufficient attention paid by either law firm to the identification of "the client" in respect of whom the parties were corresponding. 26. After taking stock of the position, the Representor issued the present Representation which sought the declarations set out at paragraph 6 above. 27. The Representation was presented to the Royal Court on 18 th December 2020 and the Court then ordered the First and Second Respondents to be convened; and by way of additional notification ordered that a copy of the Representation and the Order of the 18 th December should be sent by post and email to Mr Kolomoisky at a number of addresses and also to Mr Kartashov , Mr Ratner and Mr Bogolyubov . The Court also ordered service on the Second Respondent by substituted service on Advocate Pallot

with the request that he transmit the same to the Second Respondent, and it was ordered that a directions hearing would take place on 18 th January for the Court to consider and make an order that the Second Respondent file an affidavit setting out the steps it had taken to provide the Israeli claim documents and those papers to the relevant persons on behalf of the First Respondent, including the contact details of those persons. 28. By letter dated 23 rd December 2020 to Advocate Pallot, the Representation, Skeleton Argument dated 16 th December 2020, affidavit of Miss Shah with exhibit and the Order of the Royal Court of 18 th December 2020 were served. 29. Following the service of the present Representation and other documents, it appears there was a further conversation between Advocate Cadin and Advocate Pallot prior to the directions hearing which took place on 18 th January 2021. As a result of that conversation, a more conciliatory letter dated 15 th January 2021 was sent to Advocate Cadin by Advocate Pallot. Although expressing a number of concerns about the reinstatement of the First Respondent, and although Advocate Pallot did not expressly say that he was acting only for the Second Respondent, he nonetheless made it plain that he accepted that the First Respondent had been reinstated and the issue from the Representor's perspective must surely be whether the First Respondent had been properly served and not whether the Second Respondent was providing registered office services. He disagreed with the suggestion that his client should meet any costs arising out of the Representation but he made it clear that if what was really needed was a declaration of valid service, then his client would see what it could do to assist. At the directions hearing in January this year, Advocate Pallot confirmed that his email of 19 th August 2020 did not represent his position. He took the view that the law was clear and that the First Respondent had been validly served. As far as the Second Respondent was concerned, the Representor was entitled to a Declaration that there had been valid service but he objected to the first direction which was sought. It was suggested by the Court that Lutea Nominees should be convened as a Third Respondent because, together with the Second Respondent, it was a shareholder in the First Respondent. He did not object to an order against the Second Respondent that it make plain what it had done with the Israeli claim documents delivered to its address. 30. Thus it was that an affidavit was tendered by the Second Respondent confirming that documents addressed to the First Respondent were served at the premises of the Second Respondent on 12 th May 2020 and 13 th May 2020 and 6 th August 2020, which appeared to be the Israeli claim documents although no one at the Second Respondent had examined them. The Second Respondent had not attempted to transmit any of the documents onwards, nor was it any longer providing a registered office service to the First Respondent. Instead, the Second Respondent had attempted to email Mr Ratner, using the last known email address which was held for him on file, to inform him that there were documents addressed to the First Respondent in their reception, and he might wish to arrange for their collection. No reply had been received to its attempts to communicate with Mr Ratner. 31. The Second Respondent had also attempted to contact Mr Ratner, Mr Bogolyubov and Mr Kolomoisky by the telephone numbers which it had on record for them. Those calls were attempted in May 2020 but again were not answered or did not appear to connect. 32. At a further directions hearing on 1 st March 2021, the Representor applied for a subpoena duces tecum and cross-

examination of the director of the Second Respondent on her affidavit. Some orders in this respect were made for further disclosure, but in the event it turned out to be unnecessary for any live evidence or cross-examination on affidavits to take place when this matter was heard. Discussion 33. At the hearing on 5 th March, Advocate Pallot confirmed on behalf of the Second and Third Respondents that he accepted that the Israeli claim documents had been properly served on the First Respondent at its then registered office in Burrard Street in May 2020. Of course, he was not instructed by the First Respondent and so that acceptance of good service was not given on its behalf. He made it plain he did not object to the Court making that order however. His objection was to the suggestion that the Second and Third Respondents were providing any financial services after the dissolution of the First Respondent because of the obligations which are imposed on financial services providers if such services are provided. 34. Advocate Cadin's position was that his client had been defrauded of billions of dollars laundered through the First Respondent. He considered that the technical arguments raised by Advocate Pallot did not hold water and would make it difficult to reinstate a company once it had been dissolved where that reinstatement was sought by a creditor. What he was really concerned about in this case was that at some later stage in the Israeli proceedings, it would be contended that service on the First Respondent had been ineffective or inadequate as a result of the express statements made by Advocate Pallot and by Ms Nicola Hodge, the director of the Second Respondent as to the absence of action taken by the Second Respondent following the service of the Israeli claim documents. 35. It appears to us that it is very necessary to distinguish between the question of valid service on the one hand and the obligations of financial services providers on the other. 36. Article 72 of the Companies Law contains provision for service of documents on a company. It is in these terms: "72. Service of documents A document may be served on a company - (a) by leaving it at, or sending it by post to, the registered office of the company; (b) in accordance with Article 67(7); or (c) in the case of an existing company if no office is registered, by sending it by post - (i) in the case of a public company which is in compliance with the requirements of Article 83 to any person who is shown on the register kept in accordance with that Article as a director or secretary of the company at the address entered in that register, (ii) in any other case to any person shown as a member of the company in the register of members or in the latest annual return delivered to the registrar under Article 71 at the person's address entered in that register or, as the case may be, in that return, and (iii) where no annual return has been delivered to the registrar in compliance with Article 71 to any person whose name appears as a subscriber in the company's memorandum at the person's address shown in the memorandum." 37. The question as to where the registered office of a company incorporated in Jersey might be settled by Article 67, which is in these terms: "67. Registered office (1) A company shall at all times have a registered office in Jersey to which all communications and notices may be addressed. (2) A company does not comply with the requirement in paragraph (1) unless the occupier of the premises that are the registered office authorises for the time being their use for that purpose. (3) The registrar may, by notice in writing served on the applicants for the incorporation of a company, refuse to incorporate it if he or she is not satisfied that the

occupier of the premises that are to be the registered office of the company authorises their use for that purpose. (4) On incorporation, the company's registered office shall be that specified in the statement sent to the registrar under Article 7. (5) The company may change its registered office from time to time by giving notice to the registrar. (6) If the registrar, by notice in writing served on the company, informs it that the registrar is no longer satisfied that the occupier of the premises that are the company's registered office authorises their use for that purpose, the company shall within 14 days change its registered office by giving notice to the registrar. (7) Subject to paragraph (8), a change of registered office under paragraph (5) or (6) shall take effect upon the notice being registered by the registrar, but until the end of the period of 14 days beginning with the date on which it is registered a person may validly serve any document on the company at its previous registered office. (8) The registrar may, by notice in writing served on a company, refuse to register a notice given by the company under paragraph (5) or (6) if he or she is not satisfied that the occupier of the premises that are to be the registered office of the company authorises their use for that purpose. (9) If default is made in compliance with any requirement of or made under this Article, the company and every officer of it who is in default are each guilty of an offence."

38. These provisions were introduced by the Companies (Amendment Number 10) (Jersey) Law 2009 . This amendment does seem to distinguish between the obligations of a company and the rights of the occupier of the premises where the registered office is said to be - see paragraphs (3) and (8) which enable the Registrar of Companies either to refuse to incorporate a company or to refuse to register a change of registered office if he or she is not satisfied that the occupier of the premises that are intended to be the registered office of the company authorises their use for that purpose. 39. We are told that as at 20 th May 2020, the website of the Registrar of Companies did not show that the First Respondent, nor anyone on its behalf, had notified the Registrar of a change of address. Unsurprisingly therefore the registered address of the First Respondent at that date is shown as the address of the Second Respondent's premises, that being its registered office prior to dissolution. It follows that that address was the registered address of the First Respondent at that time. Indeed, until such time as the Registrar of Companies registers a change of registered office under Article 67(7) of the Companies Law, the address of the Second Respondent will remain the registered office of the First Respondent. A collection of documents, said to be the Israeli claim documents, had been left at that address before that date, and those documents have therefore been validly served upon the First Respondent in accordance with Article 72(a) of the Companies Law. We cannot say, of course, whether all of the Israeli claim documents ordered to be served by the Israeli Court have been so served. We can only say that the documents which have been served on the First Respondent at the address of the Second Respondent (as described in the affidavit of Ms Caroline Begbie , an office manager at Walkers, which was before the Court at the hearing) on or before 5 th June 2020 (14 days after the notice of 22 nd May - see paragraph 20 above) have been validly served and presumably, if the issue arose, it would be for the Representor to demonstrate to the Israeli Court that the documents which it had served in Jersey were the documents it was required to serve in the Israeli proceedings. 40. We also note that as a matter of ordinary procedure,

Rule 5/6 of the Royal Court Rules 2004 provides that ordinary service of a document is effected by leaving it at the proper address of the person to be served, which in the case of a body corporate is the registered or principal office of the body. Where personal service of a document on a body corporate is necessary, then under Rule 5/8, such service may be effected by serving it on any director, manager, secretary or other similar officer of the company, or by leaving it at or delivering it to the registered office of the body. 41. We are completely satisfied from every perspective that the registered address of the First Respondent was at 9 Burrard Street, St Helier, Jersey, when the documents, said to be the Israeli claim documents, were served on 12 th and 13 th May 2020 and 6 th August 2020 and accordingly that service has been properly effected. It is no part of the Rules around service of documents that the Court enquires as to what happened to the documents thereafter. If it were otherwise, there would be scope for argument in every case as to whether, in the case of service on a body corporate, all the directors of that body had been notified of the proceedings, or only some of them; whether the company had held a properly convened corporate meeting to consider what had been served and so on. These are matters internal to the company in question. As far as the opposing party is concerned, it is sufficient for it to know that the documents have been properly served in accordance with the law and rules, and indeed that is the limit of the Court's enquiry on the return date. 42. For these reasons, we made the declarations set out in paragraphs 6(ii) and (iii) above. 43. In deference to the elaborate arguments which have been raised on the wider issue of what obligations of a service provider revive on the reinstatement of a company under Article 213 of the Companies Law, we add the following comments although they are not directly germane to the decision which we have made. 44. The starting point is Article 213 of the Companies Law, the first two paragraphs of which are in these terms: "213 Power of court to declare dissolution of company void (1) Where a company has been dissolved under this Law or the Désastre Law, the Court may at any time within 10 years of the date of the dissolution, on an application made for the purpose by - (a) A liquidator of the company; or (b) Any other person appearing to the court to be interested, make an order, on such terms as the court thinks fit, declaring the dissolution to have been void and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the company had not been dissolved. (2) Thereupon such proceedings may be taken which might have been taken if the company had not been dissolved." 45. The first point to make about this Article is that it is permissive. The Court is given a discretion as to whether it should or should not make an order declaring the dissolution of the company to have been void. If the Court decides that it is right to make such an order, then the consequence is that the company is reinstated and is placed back in the same position as if the dissolution had never occurred. That must follow because if what was done is void, it *prima facie* has no effect. 46. The second part of Article 213(1) enables the court to give further directions and make such further orders as seem just , bearing in mind that the company and all other persons are as far as possible to be put in the same position as if the company had not been dissolved. It is right to focus on the potential orders the Court might make because the nature of those orders will affect who it

is the Court considers ought to be convened to the application to reinstate the company, if anyone. 47. The question as to who should be convened was considered in the matter of *Hunters Investments Limited*

[2020] JRC 256 . In that case, the applicant for reinstatement had been a director and shareholder of the company at the time of its dissolution and he presented a representation seeking to set aside the dissolution and reinstate the company in order that he could pursue what he described as valuable civil claims. The Court identified that a number of persons who before dissolution had been both directors and shareholders in the company were interested persons for the purposes of Article 213(1)(b) - and they would therefore have been persons entitled to bring an application to have declared void the dissolution of the company. On the facts of that case, the Court decided that it would not convene those other directors and shareholders to the application for reinstatement. Several of those former directors and shareholders had indicated they did not intend to oppose or appear in response to the application. On that basis, the Court did not consider it was necessary to convene them. One former director and shareholder, however, had indicated that he opposed, or might oppose, the application. In deciding not to convene any of the other former directors and shareholders, the Court took into account that a majority - indeed an overwhelming majority - of shareholders either wished the order to be made or did not oppose it, and applying the dicta in *Fakhry v Padgen*

[2020] EWCA Civ 1207, the Court considered the majority view should ordinarily be followed. The Court also took into account that the shareholder who might oppose the application was a defendant in the proposed proceedings. In any event, it was considered that the former shareholder could apply to set aside the order for reinstatement if it were made, and he did not need to be convened or be given liberty to apply in order to do so. 48. It is clear that in order to reach a conclusion that the majority of shareholders were either in favour of or not opposed to the reinstatement, those persons had to be given notice of the application. If they had not had such notice prior to the launching of the proceedings for reinstatement, the Court would presumably have considered whether they should be convened. Without deciding whether or not shareholders should be convened, a question which might involve consideration of the number of shareholders in question, it seems to us, however, that in the ordinary course of events the party which ought to be convened to an application for reinstatement is the company itself. If such an application is served on the company before the Court makes an order for reinstatement, such service would be effected at the company's last known address, namely its registered office. In that event: (i) The occupier of the premises where the registered office was last to be found will become aware of the application. (ii) It is to be presumed that if an occupier of premises has agreed that those premises might be used as a registered office for a limited company, he will have established some means for contact with those connected with the company - either the shareholders or the directors or the secretary as the case may be. Although the Court may in its discretion order the shareholders and officers of the company to be served directly, service of an application for reinstatement upon the company at its last

known registered address will in practice have the effect that those persons who are interested in whether it is reinstated, and if so, on what terms, have the opportunity either to ensure that the company is represented in Court or in their own names to seek leave to intervene to make such representations as they think it appropriate with a view to ancillary orders which the Court might have been asked to make. 49. In our judgment, therefore, in the ordinary course of events, it is best practice for the application for reinstatement, where not brought by the liquidator of the company, to be served on the company at its last known registered address. The fact that the company does not in law exist is immaterial. It is to be served because the consequence of a successful application for reinstatement is that it would exist and thus it is clearly affected by the proceedings. 50. Such service did not happen in this case, but nothing flows from it. There has been no application to have the reinstatement of the First Respondent set aside, and there is no doubt that all those persons interested in it are aware that such reinstatement has occurred. Even if there were an application to have it set aside, the fact that there may be defences entered by the company or by anyone else to the Israeli proceedings would not be a reason to set aside reinstatement. This Court would not become a parallel court of trial for the substance of the allegations in question. 51. It is apparent that if those who are legally interested in the reinstatement of a company are given notice of the proceedings, they are in a good position to consider what the consequences might be for any contracts or arrangements in place at the date of the dissolution. In some cases, that may lead to the occupier of premises where the registered office is situated filing a notice with the Jersey Financial Services Commission confirming it did not authorise its premises to be the registered office of the company in question. It would enable directors and/or other officers of the company to consider their position. In the ordinary course of events, the reinstatement of the company such that the dissolution is voided would otherwise put back relevant officers in the same position they had prior to the dissolution. 52. It will be noted that we have described what should in our judgment happen in the ordinary course of events. However, the Court has a discretion as to the identity of parties to be convened to an application before it. While in most cases it seems to us to be desirable that the company should be given notice of the application by service as if it were a party, we recognise that there may be circumstances in particular cases which would justify not giving the company such notice. Those might be cases where the applicant wishes to obtain ex parte relief in this or any other jurisdiction against persons who would become aware of the application for reinstatement and who might take steps as a result to frustrate or pre-empt any relief granted on an ex parte basis. It may be that time limits for the service of fresh proceedings are about to expire, and the immediate reinstatement of the company may be necessary to defeat limitation arguments. We do not intend to be prescriptive of the considerations which might persuade a court not to order notice of the application to be given to the company in question. In our judgment, there should be a starting point that such notice is given, and if the applicant wishes to persuade the Court otherwise, then suitable evidence by way of affidavit should be put before the Court when the representation is presented. 53. In our judgment, this approach is likely to ensure that

disputes as to whether there is continuing agreement to act as corporate services provider or whether the consent to do so lapsed with the dissolution can be identified and in most cases resolved at an early stage. This approach will also have the advantage of ensuring that financial services providers in Jersey will have the opportunity of putting such evidence before the Court at an early stage as will enable the possibly conflicting rights of the different parties to be considered. That is consistent in our judgment with the conclusions that one can draw from Article 67 of the Companies Law. The analysis is that this Article contemplates three different parties: (i) The company must choose to have a registered office. (ii) The occupier of that address must agree to (i) above. (iii) The Registrar must be satisfied as to (i) and (ii). 54. It is noted of course that if the company is in default of its obligation to have a registered office, then the officers are criminally liable under Paragraph (9) of that Article - this may be relevant where there is a reinstatement in cases like the present, where no amended registered office is notified and reinstatement has the consequence in law that the officers of the company are reinstated and put back in the position they were in at the date of the dissolution which has been avoided. 55. In our judgment, these considerations might have been taken into account at the time the First Respondent was reinstated. That did not occur. In the present case, the requested declaration that the Second Respondent's consent to act as corporate services provider to the First Respondent survives the dissolution and subsequent reinstatement is an academic issue which does not need to be resolved in order to provide the Representor with the substantive relief it seeks; but we anticipate that those who provide financial services in the Island will want in future to pay careful regard to the potential consequences of reinstatement where a company has been dissolved, and given the terms of Article 213 will take such steps prior to dissolution to ensure that any adverse consequences to them might be mitigated or avoided. Authorities Companies (Jersey) Law 1991. Royal Court Rules 2004. Control of Borrowing (Jersey) Order 1958. Companies (Amendment Number 10) (Jersey) Law 2009. In the matter of Hunters Investments Limited

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