

JERSEY / JUDGMENT

Representation of Itkin

[2023] JRC 089 (23 May 2023)

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judgment

the COMMISSIONER: 1. The Representor claims to be a creditor of Golden Sphinx Limited (the "Company"), incorporated in Jersey on 31 August 2000 and now subject to a creditors' winding up. In that capacity he seeks orders preventing the Company from instructing Advocate Jeremy Garrood and removing the Respondents from their appointment as joint liquidators. 2. The evidence before the Court is that the Company's registered shareholders have at all times been JTC Services Limited and JTC Nominees Limited, each as a nominee for JTC Trust Company Limited in its capacity as Trustee of the Amber Trust, or possibly a successor trust. The current sole director of the Company is Mrs Larissa Sabadash ("Mrs Sabadash"), the wife of Mr Alexander Sabadash ("Mr Sabadash"). It is said by the Respondents that the Amber Trust and the Company were created as passive investment holding vehicles, and these were operated for the ultimate benefit of Mr and Mrs Sabadash and their children, albeit it is said that Mr Sabadash no longer has any interest in the Trust or the Company. 3. The Representor was appointed as a director of the Company in approximately 2009 and was removed or resigned on 28 February 2017. A Mr Piotr Szymanski was appointed on 28 February 2017 and removed on 25 October 2019. Mrs Sabadash was appointed on the latter date. 4. The Representor asserts that the circumstances of his removal as director of the Company on 28 February 2017 remain in dispute. However, it is a matter of judicial record that judgment was entered in his favour against the Company on 2 December 2016 for the sum of £505,000 in relation to unpaid director's fees, along with interest and costs (the "Judgment"). An application by the Company to have the Judgment set aside was considered by the Court in 2021, and on 20 April of that year the Court determined that the Judgment should not be aside, and the application therefore failed. There was no appeal against that decision. 5. In the affidavit evidence put before the Court by the First Respondent, he indicates that he has been informed by JTC Law (the firm of advocates then acting for the Company with which Advocate Garrood is associated), that notice of a creditors' meeting was provided to the Company's creditors on 21 and 22 June 2022. Copies of the notice to creditors were put before the Court. We note that the letters were sent by mail to a lawyer in Switzerland, to Mrs Sabadash in Beverley Hills, California, to the Representor, also in Beverley Hills, but also to Revenue Jersey and Messrs Carey Olsen in Jersey. JTC Law addressed one of the letters to themselves, and that was delivered by hand. A total of six letters were thus sent out to creditors.

6. Mrs Sabadash approved a members' unanimous Special Resolution on 5 July 2022 to wind up the Company and nominated the Respondents as liquidators. The following day the Company, by its registered shareholders, resolved to wind up and nominated the Respondents as liquidators, and on that same day there was a meeting of creditors of the Company and the written resolution appointing the Respondents as liquidators was approved. Mrs Sabadash and JTC Law were, as we understand it, the only creditors present or represented. The Respondents had been contacted by JTC Law about potentially being appointed as liquidators on 30 June 2022 and indicated on 4 July 2022 that they would consent to act in that capacity. The parties' respective positions 7. There is now no dispute as to any ongoing participation by Advocate Garrood in the liquidation of the Company. He is no longer acting for the Respondents and, as they put it in their Skeleton Argument, the relief sought in that respect falls away. We will consider later in this judgment whether Advocate Garrood's earlier participation so taints the position of the Respondents that they should not continue in office. 8. Indeed, the connection between Advocate Garrood and the Respondents is one of the grounds upon which the Representor contends that their appointment as liquidators should be set aside. 9. We note that Advocate Garrood was convened to the Representation. He did not appear before the Court at the hearing of the Representation, no doubt because he was no longer instructed by the Respondents, and accordingly we have not heard directly from him. 10. For the avoidance of doubt, in the circumstances of this case, and without making any findings or criticism as to the propriety of Advocate Garrood's conduct to date, we do not consider that it would be appropriate for the Respondents to instruct him as counsel to assist them as liquidators in the liquidation of the Company. 11. It is clear from the documentation we have seen that there are a number of complex issues to be considered in relation to the liquidation of the Company. There is currently litigation involving the Company and the Representor which continues in a number of jurisdictions. There are three sets of proceedings in Jersey, quite apart from this present application, those other proceedings being stayed as a result of the winding up. There are three sets of proceedings in California, some in the State court, some in the Federal court and some in the Bankruptcy court, the Respondents having filed a motion for recognition of their title there. There are proceedings before the Business and Property Courts in Manchester concerning the ownership of the shares in New Albion Property Limited ("New Albion"), which owns a property in California, to which we note the letter to Mrs Sabadash giving notice of the creditors' meeting of the Company was addressed. The Company has filed a claim in certain bankruptcy proceedings in the Isle of Man involving two companies connected with Mr and/or Mrs Sabadash, one of which is bankrupt. 12. It appears that much of the litigation has at its core a dispute over an alleged partnership between the Representor and Mr Sabadash who, it is said, was arrested in Moscow in 2014, allegedly as a result of political differences with government representatives and has been incarcerated since. The Representor asserts that the breaches of the alleged partnership agreement led him to take protective action over the assets in which Mr Sabadash allegedly had an interest. We do note that there are serious allegations of fraud made against the Representor, and serious allegations in some of the US proceedings made against Mrs Sabadash. We obviously make no findings in relation to either set of claims. It is quite impossible for us at this stage to do anything other than note the series of complex proceedings It is quite impossible for us at this stage to do other than

note the series of complex proceedings which exist in the different jurisdictions, but we can immediately acknowledge that it is unsurprising that it was necessary for the Respondents to establish their status to act for the Company in the various pieces of litigation to which it is a party. 13. The First Respondent is registered as an approved liquidator in Jersey. In his affidavit, he says that he is a chartered accountant with nearly twenty years' experience working with stressed and distressed businesses. He estimates that he has held over ninety appointments as liquidator, administration manager or receiver. In addition to being on the register of approved liquidators in Jersey, he is also a UK qualified insolvency practitioner and a fellow of the Institute of Chartered Accountants in England and Wales. 14. The First Respondent asserts on affidavit that his colleague, the Second Respondent, is also a chartered accountant and an experienced insolvency practitioner, a senior managing director with a Guernsey firm, having over eighteen years financial services experience. He is registered as a non-Jersey approved liquidator and also a UK qualified insolvency practitioner and fellow of the Institute of Chartered Accountants in England and Wales. The Representor's complaints against the Respondents 15. The Representor asserts that the Respondents are not impartial in their approach for the following reasons: (i) He has an unassailable Judgment debt in the sum of £505,000 which the liquidators have seemingly valued at £0 in their Statement of Affairs. (ii) For much longer than should have been the position, the Respondents took advice from Advocate Garrood who the Representor considered to be in a hopelessly conflicted position. (iii) The liquidation of the Company was not instituted or pursued in good faith, or in the interests of the creditors as a whole - and in reality, the Representor claims to be the only true creditor of the Company in the sense that all the other debts owed to the Company have been incurred in opposing his taking of judgment and in the application to have that Judgment set aside. (iv) The Representor raised the issues and concerns in a letter to the Respondents dated 6 August 2022, and has not received any substantive response. In particular, he has enquired how the Company can afford to pay its legal fees and who or what is underwriting those fees and the costs of the liquidation, in circumstances where Mrs Sabadash has sworn on oath that the Company has no funds. The fact that the Respondents refuse to engage with that question is said to demonstrate their lack of impartiality. (v) There is a cause of action in negligence against Messrs Carey Olsen and / or Advocate Garrood with which the Respondents do not seem prepared to engage. That cause of action is said to have a value but has never been listed or identified as an asset of the Company. The law 16. Article 175 of the Companies (Jersey) Law (the "Law") is in these terms: "Appointment or removal of liquidator by the Court (1) The Court may appoint a liquidator if for any reason there is no liquidator acting in a creditors' winding up; (2) The Court may, on reason being given, remove a liquidator in a creditors' winding up and may appoint another; (3) The appointment or removal of a liquidator under this Article may be made on request by the company, a director of the company, a creditor, the Viscount, the Commission, the Minister or any other person." 17. Local case law on this Article is limited but the most detailed is a decision in *Bisson and Others v 3B Holdings Limited (In Liquidation)* and *Others In the Matter of 3B Holdings Limited*

[2012] JRC 021 . That case concerned an application by the representors to remove the second and third respondents as joint liquidators, that company not being subject to a creditors' winding up but to a just and equitable winding up under Article 155 of the law. The Court held that although Article 175 applied to the removal of a liquidator on a creditors' winding up and that case concerned a winding up on just and equitable grounds, the same criteria would apply to the removal of a liquidator in both cases. 18. Clyde-Smith, Commissioner, noted the cases of *Hotel Beau Rivage Company Limited v Careves Investments Limited* [1985-86] JLR 70, confirming the authority of *Re Matthews (Stephen) Limited* Royal Court 1980 267 Ex 443, that if there were grounds for suspecting that a liquidator was acting improperly or was neglecting his duty then the Court may interfere. Reference was also made to the case of *Re Inter Estate RC 1998/35A* where the Court had no difficulty in removing one of two joint liquidators for manifest breaches of his duties as a joint liquidator - in that case, the removed liquidator did not advise the bank of the change in his co-liquidator until three years later and even then did not change the bank mandate details to remove the retired co-liquidator and add his replacement. Instead, he sought to operate the account in an improper manner under his sole signature. 19. Turning to English case law on the equivalent power in that jurisdiction, Clyde-Smith, Commissioner, referred to the case of *ANP Ordinary Type Music Box Enterprises Limited v Hoffman*

[2003] 1 BCLC 319, citing from the judgment of Neuberger J (as he then was) laying down what the judge described as anodyne but still useful propositions in relation to the powers of the English Court to remove a liquidator for good cause: "As a matter of ordinary principle and statutory interpretation, that seems to me to suggest as follows:

- (a) the Court has a discretion whether or not to remove and replace the liquidator, (b) it will do so on good grounds, (c) it is up to the person seeking the order to establish those grounds, (d) whether good grounds are established will depend on the particular facts of a particular case, (e) in general it is inappropriate to lay down what facts will and what facts will not constitute sufficient grounds." 20. Neuberger J went on to make the following observations which the Court described as helpful: "In an application such as this, the Court may have to carry out a difficult balancing exercise. On the one hand the Court expects any liquidator, whether in a compulsory winding up or a voluntary winding up, to be efficient and vigorous and unbiased in his conduct of the liquidation, and it should have no hesitation in removing a liquidator if satisfied that he has failed to live up to those standards at least unless it can be reasonably confident that he will live up to those requirements in the future. Support for this approach is not only to be found in *Keypak*, but also in some cases where the Court has compulsorily wound up the company and appointed a new liquidator in circumstances where there is already a voluntarily liquidator in place - see for instance, *Re Zirceran Limited*

[2000] 1 BCLC 751, especially at paragraph 25(5). Also where the liquidator could not be seen as independent - see, for instance, *Re Lowestoft Traffic Services Limited* [1986] 1 BCLC 84 (where the liquidator concerned seems to have been the same liquidator as in *Keypak*). It

may also be right to remove a liquidator where the circumstances are such that, through no fault of his own, he is perceived to be - even though he may not be - biased in favour of, say, one or more of the creditors - see per Robert Walker J in *Re Gordon and You Breach Science Publishers Limited*

- [1995] BCC 261, another case concerned with a compulsory winding up order in circumstances where there was already a voluntary liquidator in place. While the removal of the liquidator is not necessarily based on any fault on his part, most such cases will involve a degree of criticism. Although in *Keypak* Mr Justice Millett emphasised there was no criticism of the general ability, experience and professionalism of the liquidator, and that, even in relation to the particular case, there was no evidence of his being biased or dishonest, it is nonetheless clear that he was removed because the judge took a dim view of the way in which he had conducted the particular liquidation. As the judge said, the fact that this may to some extent resound to the discredit to some extent of the liquidator, does not mean that the Court should shy away from making the order. On the contrary, in an appropriate case it is the duty of the Court to make such an order, not merely on the merits of the particular case, but also because it sends out a clear message to liquidators that they have an important function which they should conduct in a vigorous, effective and independent manner. On the other hand, if a liquidator has been generally effective and honest, the Court must think carefully before deciding to remove him and replace him. It should not be seen to be easy to remove a liquidator merely because it can be shown that in one, or possibly more than one, respect his conduct has fallen short of ideal. So to hold would encourage applications under Section 108(2) by creditors who have not had their preferred liquidator appointed, or who are for some other reason disgruntled. Once a liquidation has been conducted for a time, no doubt there can almost always be criticism of the conduct, in the sense that one can identify things that could have been done better, or things that could have been done earlier. It is all too easy for an insolvency practitioner, who has not been involved in a particular liquidation, to say, with the benefit of the wisdom of hindsight, how he could have done better. It would plainly be undesirable to / encourage an application to remove a liquidator on such grounds. It would mean that any liquidator who was appointed, in circumstances where there was support for another possible liquidator, would spend much of his time looking over his shoulder, and there would be a risk of the Court being flooded with applications of this sort. Further, the Court has to bear in mind that in almost any case where it orders a liquidator to stand down, and replaces him with another liquidator, there will be undesirable consequences in terms of costs and in terms of delay." 21. It is also useful to note in *Re Keypak Home Care Limited*
- [1987] BCLC 409, where Millett J (as he then was) said this: "It was submitted to me that the rule laid down in [*Re Adam Eyton*], that in order to effect the removal of the liquidator the Court needs only to be satisfied that it is for the general advantage of those interested in the assets of the company that the liquidator to be removed, must be read in the context of the facts of the case and that very special circumstances must exist before the power can be exercised in a case in which no personal misconduct or unfitness can be shown on the

part of the liquidator. There were special circumstances in that case, but I do not read the general principle laid down by the Court of Appeal as being limited to cases in which special circumstances can be shown. On the contrary, the words of the statute are very wide and it would be dangerous and wrong for a Court to seek to limit or define the kind of cause which is required. Circumstances vary widely, and it may be appropriate to remove a liquidator even though nothing can be said against him, either personally or in his conduct of the particular liquidation." 22. In *Re 3B Holdings Limited*, the Court adopted the principles set out in the English cases cited above. Clyde-Smith, Commissioner, said at paragraph 65: "The underlying test is that the Court may remove a liquidator (whether appointed by the Court or in a creditors' winding up) where it is satisfied that it is for the general advantage of those interested in the assets of the company to do so. Due causal action is to be measured by reference to the real, substantial and honest interests of the liquidation and to the purpose for which the liquidator is appointed. As made clear in *Re Adam Eyton*, we are concerned with the substantial or real interests of the liquidation by which is meant all those who are interested in the company being liquidated. However the Court will not lightly remove its own officer and will take into account the impact on his or her professional standing and reputation and the undesirable consequences in terms of cost and delay." Discussion 23. We deal first with the complaints in relation to Advocate Garrood, whose participation in the events leading up to Judgment being taken by the Representor against the Company, and in relation to the set aside application, are set out at paragraphs 13 to 24 of the Judgment *Itkin v Golden Sphinx Limited*

[2021] JRC 117 . It is clear that the Court has already expressed itself satisfied from the evidence which it has seen previously that Advocate Garrood was on the side of those hostile to the Representor - in other words, Mr and / or Mrs Sabadash. 24. It is also clear that, regardless of the compliance with the Company's Articles or the Law (on which we make no findings) of the notice to creditors given by JTC Law on 21 June 2022 of the meeting which was to be held at 4.30pm on 6 July, as a matter of practicality, because that letter was sent by mail, it seems highly likely that the notice did not arrive with the Representor in good enough time for any action to be taken prior to that creditors' meeting. In his second affidavit in these proceedings, the Representor says that he did not receive notice of the meeting until 19 July. This is relevant, not because the resolution to go into liquidation would not have been passed, but because, as a creditors' winding up, the creditors would have an interest in determining the identity of the prospective liquidators. The difficulty in the present case lies, from the Representor's perspective, in the fact that the Respondents were not only advised in the first instance by the same legal team who was acting for his opponents in the litigation against him, but, as he indicates in his second affidavit, it was more likely than not that it was Advocate Garrood who suggested and / or advised Mrs Sabadash that the Respondents should be appointed as liquidators. Mr Itkin is careful to indicate that he does not assert that simply because Advocate Garrood was the route through which the Respondents were appointed as liquidators, it follows that they are biased or would do anything untoward, but he does assert that that fact provides a prism through which one

should consider and evaluate their decisions and actions. 25. It would be unsurprising if Mrs Sabadash asked for advice from Advocate Garrood, as to the best method of dealing with the various litigations which engaged the Company in which she claims an interest. We proceed on the assumption that the decision to put the Company into liquidation was a decision arrived at on advice from Advocate Garrood; and we think it is more likely than not that it was Advocate Garrood who made the enquiry of the Respondents as to whether they would be prepared to act. 26. We now consider the action which the Respondents have taken since appointment and the criticisms which the Representor makes of them. 27. The Representor notes the statement of the Respondents that they understand Mr Sabadash no longer has any discretionary beneficial interest in the Amber Trust and, consequently, the Company. He notes that no explanation is given as to why that should be so. Given that the Representor allegedly has claims against Mr Sabadash arising out of a partnership which the two of them had, the issue as to whether Mr Sabadash has any interest in the Amber Trust or the Company could conceivably be very relevant. One can understand therefore why the Representor should be suspicious of an apparent change in the beneficial interest in the Company in the circumstances where the Trust was apparently set up in the first place for the benefit of the Sabadash family. 28. Since their appointment, the Respondents say they have been active in their efforts to protect and conserve the Company's position and its assets for the benefit of all creditors. They confirm that the Company has no cash or other significant liquid assets. They say that the Company is plainly insolvent and a Statement of Affairs as at 5 July 2022 indeed shows that to be true. The major assets are shares in New Albion, which is said to be the sole beneficial owner of a property in Beverley Hills, California, which is the same address to which JTC Law wrote when communicating with Mrs Sabadash as to the date of the creditors' meeting. The Statement of Affairs also shows the main creditor to be Mrs Sabadash - other creditors of the Company are various lawyers in Jersey and Switzerland in relatively small sums; and the Representor is shown as having a Judgment debt of £505,000 plus costs and interest, but the debt is "subject to a set off of £35 million arising from his unlawful misappropriation of the two shares in New Albion Property Limited". 29. The Statement of Affairs is a document that was signed by Mrs Sabadash. The way in which the certain debt of the Company due to the Representor as against the uncertain value of the claims which the Company might have against the Representor in respect of the shares in New Albion is presented is, therefore, not a matter to be laid at the door of the Respondents. Understandably the Respondents say that they have taken significant time and effort since their appointment to consider the various pieces of litigation in which the Company is involved. In his affidavit, the First Respondent makes it plain that the Statement of Affairs, which lists the Company's liability to the Representor as £0, is not an indication of any view which the Respondents have formed on the claims against the Representor. We find that the Respondents have acted properly in that respect, and we have noted a letter from their advocates, Messrs Collas Crill, dated 7 November 2022, that the value of the Jersey Judgment is "not contested by the liquidators". 30. The Representor claims he is the only true creditor of the Company and some of his criticisms of the

Respondents seem to flow from his assessment that they should have rejected any other approach. The First Respondent says in his affidavit that the Statement of Affairs makes it clear that the Representor is not the Company's sole creditor. Just as it would be improper to assume at the present stage that the value of the debt to the Representor is £0, so it would also be improper at this stage for the Respondents to have ignored the other creditors of the Company listed in the Statement of Affairs. Assessing who is a creditor of the Company and how much is due is all part of the liquidation process. There is no criticism to be made of the Respondents in that respect. 31. The Representor claims that the liquidation of the Company is being deployed to frustrate his efforts at recovering what is owed to him, whether those steps are taken in Jersey, the USA, or England. He says in his affidavit that he set out the issues and concerns in particular in a letter of 6 August 2022 sent by Preston Legal to the Respondents (the "6 August Letter"). 32. The Representor's lawyers opened by saying that the 6 August Letter had four distinct purposes - to notify the Respondents of the Representor's claims in the winding up of the Company, to make various requests for information, to raise various concerns in relation to the running and representation of the Company and to provide responses to the Respondents' letter of 27 July. The claims are for \$55 million plus £505,000 plus interest and costs. 33. In March 2022, at the instance of Mrs Sabadash, the Company had issued an Order of Justice against the Representor in respect of material which the Representor considered was covered by the Judgment and strike out application, and was thus *res judicata*. The 6 August Letter sought confirmation from the Respondents as to how they proposed to deal with this litigation. 34. Because the Representor was not at the creditors' meeting on 6 July 2022, the request in the 6 August Letter was for all information which was provided to that meeting; and if there was objection to providing the information, there was a request for the nature of the objection. The next question was as to who was funding the Company to enable it to engage with litigation in three separate jurisdictions, given the fact of the Company's insolvency. The next request related to the giving of notice of the creditors' meeting, it being asserted that the Company had committed an offence by proceeding with the creditors' meeting without giving proper notice to the Representor. The Respondents were asked for the results of their enquiries into this matter. The 6 August Letter then went on to express concerns about the conflict of interest in Advocate Garrood acting for the Company as well as being a creditor of the Company and in the context of Advocate Garrood's alleged conflict of interest from having acted for the Representor since at least 2016. 35. Finally, concerns were then expressed in the 6 August letter about various requests for information which had been made on behalf of the Respondents by JTC Law, the Respondents' then legal advisers. The point was made that these very same legal advisers had, until recently, been retained to act directly against the Representor in hostile litigation, and the fact that the same law firm was then making requests and demands on behalf of the Respondents made the Respondents' position untenable. 36. Given the complaint that the Respondents are not impartial, it is relevant to consider the reply which was sent on 18 August 2022 (the "the 18 August Letter"). 37. The first thing to note is that the reply was sent by Advocate Garrood on behalf of the Respondents, and indeed it opens

with the request that Preston Law should deal with him directly and not by writing to the Respondents themselves. It might be thought that response was tactless, to say the least in the circumstances. The 18 August Letter asks for proof of the Representor's claims against the Company in the usual way. Insofar as the Order of Justice commenced by the Company was concerned, the 18 August Letter noted that that action had been stayed by the Royal Court of its own volition and the response was that the Respondents were considering the future conduct of that case. 38. As to the request for information, the 18 August Letter attached a copy of the Statement of Affairs that was presented at the creditors' meeting; it indicated that the Respondents would not provide the information requested as to the funding of the Company because that was a matter which related to the Company's internal management and the Representor was not entitled to the information. Advocate Garrood also said in the 18 August Letter that the Respondents were satisfied that the notice of the creditors' meeting was sent to the Representor on 21 June in accordance with Article 160 of the Law and the complaints made by the Representor were misconceived. The 18 August Letter then went on to say - clearly not on behalf of the Respondents - that "We [i.e. JTC Law] do not consider we are conflicted ". The letter concludes with various comments in relation to the shares in New Albion where the Respondents' position was reserved, as indeed it was generally. 39. In the hearing before us, Advocate Hurry submitted that, despite the objections which had been put forward, the Respondents were not lined up against the Representor. They were office holders with an intention to follow up on their statutory functions and fulfil them in the interests of the creditors. He submitted that an enormous amount of work had been done to establish the landscape and an assessment would be made later. There had been liaison with counsel in different jurisdictions and the Respondents were keen to progress matters. 40. As at the date of the hearing, the Respondents' position was that it would be preferable if all the outstanding litigation were to be heard in Jersey and, in the meantime, the Representor should return to the Company its various assets said to be in the Representor's possession, including the two shares in New Albion. 41. In the course of the hearing, we asked Advocate Hurry who was funding the liquidation. His response was that the Respondents would of course provide that information to the Court if so directed, but they considered that it was private information to which the Representor was not entitled as he was in hostile litigation with the Company. The Court considered that in the light of the circumstances surrounding the appointment of the Respondents it would be appropriate to disclose the identity of the funders of the liquidation. We were told by Advocate Hurry that the funder was Mrs Sabadash. In his closing argument, he said that funding of the liquidation was an issue and third party funding was being considered. The Respondents would not bring proceedings unless they could take them through to completion. We have no further information than that. 42. It is not uncommon that there should be serious litigation between liquidators of a company and one or more of the company's creditors. In those cases, the liquidators have a duty to the creditors as a whole to ensure that the assets available to the company are utilised in the best interests of the creditors. The free passage of information to creditors is not always easy when one of those creditors is in hostile litigation with the

company because it might well be inappropriate to provide privileged information to such a creditor. 43. Nonetheless, the old adage that he who pays the piper calls the tune is never more relevant than in litigation. It was - or should have been

- obvious to the Respondents from the outset of their appointment that the maintenance of an impartial position on their part would be almost impossible if they and the lawyers instructed by them were paid by a party with whom one of the major creditors of the company was in direct dispute. The position is aggravated by the arrangements surrounding the appointment of the Respondents by the Company, which do not seem to us to be obviously beyond reproach. 44. All the different pieces of litigation have at their heart the dispute between the Representor on the one hand and Mr and/or Mrs Sabadash on the other. It follows that the Respondents' complaint that the Representor is merely seeking his own preferred liquidators is a complaint that can just as easily be laid against Mrs Sabadash. 45. The position of the Respondents in the present case has been exacerbated by the early communications on their behalf by Advocate Garrood who, although we have not heard from him, must also have been aware of the position we have just described. The Respondents' position has also been exacerbated by their refusal to confirm, until put under pressure in Court, the identity of the party funding the liquidation and the conduct of the litigation, when it must have been obvious to them and those advising them that it would be almost impossible for a liquidator, relying on such funding, to take an impartial and independent position on behalf of the Company in a battle between two warring creditors. 46. We are unsurprised at the complaints which the Representor has made. The Company is apparently clearly insolvent and has been so for some time, but that does not seem to have inhibited its involvement and participation in numbers of pieces of litigation. All that suggests is that the liquidation was a device for litigation advantage. 47. We are quite satisfied that the Respondents are professionals who now seek to do their job as liquidators. At the same time, the funding of what they do is so fundamental to their ability to satisfy the creditors as a whole (thus including the Representor) and we do not think they can continue in this role until the funding is clarified. They have made no quasi Beddoe application to the Court which might have addressed the Court's concerns, and indeed those of the Representor as to what steps they should take in the very difficult circumstances facing them given the conflict between their obligations to the Company and its creditors as a whole and their reliance on Mrs Sabadash for funding. 48. The liquidation is a continuing process. We invite the Respondents, in the light of this judgment, to return to Court with details of such progress as they have made on the proposed alternative funding arrangements for the liquidation and the conduct of the litigation. If these are not found by the Court to be adequate, then in our judgment the Court will be obliged to invite further submissions as to whether the Respondents should be removed and others appointed, how such liquidators should be remunerated and/or whether some other step should be taken in relation to the liquidation. 49. Counsel for the parties are directed to attend on the Bailiff's Judicial Secretary to fix a date convenient to the Court and the parties as to when this might take place, ideally within the next six weeks. Postscript 50. The foregoing provisions of this

judgment

- with some minor corrections which have been made subsequently - were sent to the parties on 3 May 2023 with the customary invitation to the parties to submit their comments with details of obvious factual and typographical errors before the judgment was finalised. No comments were received from Advocate Jones. Advocate Hurry submitted a number of comments to address typographical errors and stylistic changes all of which have been taken into account. However, in a second letter dated 5 May 2023, he made a number of further submissions, inviting in effect the Court to amend its conclusions. The fact that he did so in a most respectful manner does not detract from the substance of what he was trying to achieve. The submissions were made with the expressed view that they were made "in the belief that it is their duty, and that it is in the interests of justice to do so." 51. Although we have accepted some of the points made and amended the draft judgment accordingly, we have not accepted the substance of the criticisms and it will be for the Respondents to take the matter up with the Court of Appeal if so advised in the usual way. Given that possibility, it is perhaps appropriate that we make these comments in relation to the criticisms made. 52. As our summary of the objections taken by the Respondents the key points were: (i) It is wrong for the Court to have regard to the fact that Mrs Sabadash is funding the Respondents in the liquidation. If the funding of the liquidators by a creditor with an interest in the proceedings were an objection to those liquidators remaining in office, there could be serious consequences for liquidators in many liquidations of Jersey companies. (ii) It is wrong for the Court to have concluded that Mrs Sabadash and the Representor were "warring creditors" or otherwise in direct dispute. Even if true, that would be irrelevant to what we had to consider. (iii) The Amber Trust was and is the owner of the shares in the Company and it is wrong to refer to there being any change in beneficial ownership. In any event, the ownership of the Company has no bearing on the issues in the litigation, which from the Respondents' perspective is really about recovering the Company's assets from the Representor. (iv) The alleged partnership dispute between Mr Sabadash and the Representor is similarly irrelevant to the issues arising on the liquidation of the Company. (v) The Representor's cross claim against Mrs Sabadash in the United States has been dismissed. 53. As we have described at [16] to [22] above, the Court has a discretion to exercise in dealing with applications such as that brought by the Representor. That discretion is exercised on the particular circumstances of each case and cases are frequently very different from each other. We recognise that the Respondents make a superficially valid point that liquidators of companies are frequently funded by one or more creditors in circumstances where the company in question could not otherwise afford the cost of liquidation. In the present case, the Company does not appear to be insolvent on the balance sheet test, if indeed it is entitled to the shares in New Albion Property Limited which it claims. These are valued at £2 in the statement of affairs prepared by Mrs Sabadash but that is their nominal value only and as owner of the property in Beverley Hills, California in which Mrs Sabadash appears to be living, it would seem the true value is well in excess of that, and indeed well in excess of the debts. It does appear to be insolvent on the basis that it is unable to pay its debts as they fall

due. But what are those debts? In practice they seem to be largely if not exclusively debts incurred in relation to litigation against various entities and the Representor. Those pieces of litigation have been continuing since approximately 2017 and must have cost a great deal of money. If Mrs Sabadash is currently funding the Respondents as they confirm she is, we have proceeded on the basis that she has before their appointment been funding the Company and although there is no evidence specifically on this, there seems a high degree of probability that the loan account in the books of the Company in her favour represents at least for the most part the costs of the litigation and the maintenance of the Company in good standing. Without the litigation, there would appear to be no more insolvency now than there has been at any time before 2017. 54. The Respondents have wide responsibilities as liquidators, not just in terms of collecting in the assets of the Company and settling its debts but also in considering and if necessary reporting on the Company's administration prior to their appointment. The former of those responsibilities involves them in a dispute with the Representor, the same dispute that Mrs Sabadash must have been funding over the last few years. The latter responsibilities may lead them to consider not only the administration of the Company when the Representor was the sole director but also more latterly since 2019 when Mrs Sabadash has been the sole director. 55. This prompts consideration of whether a) the litigation will address only the matters for which Mrs Sabadash is willing to pay and b) the Respondents would in practice to fulfil their reporting duties in respect of any breaches or maladministration by Mrs Sabadash. In our view, common sense suggests that neither would be realistically possible for as long as Mrs Sabadash is funding them, unless there are in place financial arrangements of which we are currently unaware. This is why at

[47] to [48] above, the Court wanted to receive further submissions. It may be that some of those submissions should not be made in the presence of the Representor. That is a matter on which the Representor and the Respondents will reflect and indeed, the Court may itself have to adjudicate. We do not currently anticipate - although this may not turn out to be correct - that an analysis of the merits of the Company's litigation in the different jurisdictions will be central to our consideration at this stage. Without any conclusions, we have assumed that the Company's claims may have merit. 56. One might take the view that the liquidators of a company will merely act in the overall interests of the company and its creditors and thus there is no damage done in this case by the Respondents having the conduct of the litigation. In our view, that does not give sufficient weight to the nature of the appointment. As we understand it, the fact of their appointment has already had an impact on the litigation because courts in different jurisdictions make the starting assumption that claims against the Company should be put back until they are dealt with by the liquidators in the ordinary course of the liquidation. That occurred immediately the Respondents had their title as liquidators recognised in the various courts. There is an informal presumption of regularity on which professional liquidators are entitled to rely, which recasts the balance of litigation. 57. When we ask ourselves the question - what has changed between 2017 and July 2022? - it is not obvious that anything has. The Company was litigating against the

Representor and still is. More likely than not, Mrs Sabadash was funding the Company and she still is. In other words, the probability at this stage is that the resolution to place the Company in liquidation, which clearly would not have happened without Mrs Sabadash' approval, was a device intended to confer on the Company a benefit in the litigation in which it was involved. This appears to us to be a factor which goes into the mix in relation to points (i) and (ii) at [52] above. 58. The assertion that the partnership dispute between Mr Sabadash and the Representor is irrelevant to the issues surrounding the liquidation of the Company may be correct. We recognise that there may be an argument that the court should not attempt to pierce the corporate or fiduciary veil. We do not ourselves attempt to do so at present. But equally we do not consider that at this stage it would be right to assume that it cannot be a relevant consideration. This is perhaps a good example of a different approach that is taken by liquidators funded by an interested party and a court, which will step back until the facts are ascertained. 59. Finally, it is said in correspondence that the claim against Mrs Sabadash has been dismissed. That was not apparent to us on the evidence produced at the hearing and we do not comment on it. 60. For these reasons, the judgment is now handed down. Authorities Companies (Jersey) Law 1991. Bisson and Others v 3B Holdings Limited (In Liquidation) and Others In the Matter of 3B Holdings Limited

[2012] JRC 021 Hotel Beau Rivage Company Limited v Careves Investments Limited [1985-86] JLR 70. Re Matthews (Stephen) Limited Royal Court 1980 267 Ex 443. Re Inter Estate RC 1998/35A. ANP Ordinary Type Music Box Enterprises Limited v Hoffman [2003] 1 BCLC 319. Re Keyapak Home Care Limited [1987] BCLC 409. Itkin v Golden Sphinx Limited

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