

JERSEY / JUDGMENT

Representation of Rendle and Butcher

[2017] JRC 042 (16 March 2017)

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judgment

the deputy bailiff: 1. This is an application by Richard Rendle and Roderick Butcher, joint liquidators of Arck LLP for an order pursuant to Article 155 of the Companies (Jersey) Law 1991 ("the Companies Law") winding up Arck Estrela Limited ("Estrela") on just and equitable grounds. 2. On 9 TH January, 2017, this Court (Commissioner Clyde-Smith and Jurats Thomas and Pitman) ordered that Estrela's dissolution be declared void pursuant to Article 213 of the Companies Law and that its register of members be rectified pursuant to Article 47 of the Companies Law to reflect the fact that the Representors are the holders of a 100 ordinary shares in Estrela (see the judgment of the Court Representation of Rendle and Butcher

[2017] JRC 004). 3. The background to this application which we take with thanks in abbreviated form from the judgment mentioned above, is as follows: (i) Arck LLP ("Arck") was established by Mr Richard Clay and Mrs Catherine Clark as an investment vehicle for unregulated property development investments and attracted a large number of private UK investors between 2006 and 2011 who invested £50 million in total. One of the investments entered into was a property development in Cape Verde via Estrela. Arck advanced a loan of approximately £24.4 million to Estrela to finance the development which remains outstanding in its entirety. (ii) Arck went into liquidation in 2012 amidst allegations that the investment scheme was a scam perpetrated by Mr Clay and Mrs Clark to defraud investors. Following an investigation and prosecution by the UK Serious Fraud Office Mr Clay and Mrs Clark were found guilty of various fraud and forgery offences. Mr Clay was sentenced to more than 10 years in jail, whilst Mrs Clark received a 2 year suspended sentence. Both have been disqualified from serving as directors. (iii) Arck's main creditor is Clydesdale Bank PLC which had provided banking facilities to Arck prior to its winding up and had held Arck investors subscription monies. (iv) A substantial part of that Bank's unsecured claim in the liquidation arose consequentially upon arrangements whereby it has agreed to compensate certain of Arck's investors in return for an assignment to it of those investors' claims in the liquidation. This claim amounts to £20,086,387.59. The total unsecured claims in the liquidation amount to approximately £45 million. 4. For the reasons set out in the judgment cited above this Court on 9 th January

ordered that the dissolution of Estrela be declared void and that Estrela's register of members be rectified to reflect that Arck is the legal owner of 100 ordinary shares. The basis of the orders made on 9 th January, 2017, as is clear from the judgment of the Court, was to provide for an application by the Representors, who are the joint liquidators of Arck, to make an application under Article 155 of the Companies Law for a just and equitable winding up of Estrela. This is the application that is now before us. 5. Article 155 (1) and (2) of the Companies Law provides as follows: "(1) A company, not being a company in respect of which a declaration has been made (and not recalled) under the Désastre Law, may be wound up by the court if the court is of the opinion that:

- (a) it is just and equitable to do so; or
- (b) it is expedient in the public interest to do so.

- (2) An application to the court under this Article on the ground mentioned in paragraph (1)(a) may be made by the company or by a director or a member of the company ..." 6. Accordingly the Representors now, as joint liquidators of Arck, being a member of Estrela, have the locus standi to make an application pursuant to Article 155 of the Company Law. 7. The jurisdiction of the Court to order a winding up of the company on just and equitable grounds is a broad one. A number of basis for the exercise of such a jurisdiction have been identified in case law including the ground that the substratum of the company in question has been lost. 8. In the matter of Leveraged Income Fund Limited 2002/209 the Court (Birt Deputy Bailiff as he then was presiding), said this at paragraph 12: "The court is in no doubt that the substratum of this company has gone. The company was formed to provide an investment vehicle for shareholders. In the events which have happened all the funds have been lost. The company no longer has any money to invest for its shareholders; on the contrary it is grossly insolvent. There is no prospect whatsoever of the company ever being able to recommence its investment activities." 9. It is clear that the substratum of Estrela has been lost for very similar reasons and there is an appropriate basis for the exercise of this Court of its jurisdiction to order a just and equitable winding up. 10. We gave consideration as to whether any other individuals or corporate entities needed to be joined to the Representors application. In the light of the order of the Court of 9 th January, 2017, Mr Hobbs no longer has any interest in the company and the remaining shareholders in Estrela were either a dissolved Isle of Man company previously controlled by Mr Clay and Mrs Clark and by a dissolved Jersey company which had previously been owned by the Representors and a Mr Denis who had been served with the original representation but did not provide any response. 11. Accordingly we felt able to deal with the application before us and we order a just and equitable winding up pursuant to Article 155 (1) of the Companies Law and order that, as requested by the Representors, Linda Johnson of KPMG Channel Islands Limited and David Standish of KPMG LLP London be appointed as joint liquidators of Estrela. We also make the further orders for the carrying into effect of the winding up of Estrela as contained in the Act of Court. Authorities Companies (Jersey) Law 1991.
Representation of Rendle and Butcher

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