EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

ANGUILLA

AXAHCVAP2013/0007

IN THE MATTER OF the Companies Act (c. C65)

IN THE MATTER OF Leeward Isles Resorts Limited (In Liquidation)

IN THE MATTTER OF a Petition by Charles Hickox and Linda Hickox for the Winding Up of Leeward Isles Resorts Limited (In Liquidation) pursuant to section 215 (1)(b) Companies Act (c. C65)

IN THE MATTER OF the Inherent Jurisdiction of the Eastern Caribbean Supreme Court (Anguilla Circuit)

BETWEEN:

[1] BRILLA CAPITAL INVESTMENT MASTER FUND SPC LIMITED (A Cayman Islands segregated portfolio company, for and on behalf of Brilla Cap Juluca Segregated Portfolio M, a segregated portfolio thereof)
[2] ANGUILLA HOTEL INVESTORS II LIMITED
[3] BRIDGE FUNDING LIMITED

Appellants/Applicants

and

[1] JOHN GREENWOOD (Acting as Liquidator appointed to Leeward Isles Resorts Limited (In Liquidation) by Order dated 4 May 2012
[2] LEEWARD ISLES RESORTS LIMITED (IN LIQUIDATION)
[3] CAP JULUCA L&C LIMITED
[4] CAP JULUCA L&C PROPERTIES LTD
[5] CHARLES & LINDA HICKOX
[6] ANGUILLA SOCIAL SECURITY BOARD

Respondents

Before:

The Hon. Mr. Mario Michel — Justice of Appeal
The Hon. Mde. Gertel Thom — Justice of Appeal [Ag.]
The Hon. Mr. Paul Webster, QC — Justice of Appeal [Ag.]

Appearances:

Mr. Robert Levy, QC with him Mr. Edward Knight and Mr. Ravi Bahadursingh instructed by Chancery Lane Chambers for the appellants
Mr. Christopher Pymont, QC with him Ms. Dia Forrester instructed by Daniel Brantley & Associates for the first and second respondents
Mr. Allan Wood, QC with him Ms. Tan'ania Small Davis and Mr. Kerith Kentish instructed by Joyce Kentish & Associates for the third, fourth and fifth respondents
Mr. J. Alex Richardson instructed by Alex Richardson & Associates for the sixth respondent

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2014: June 26;
November 24.

Civil appeal – Interlocutory appeal – Removal of liquidator – Whether master erred in refusing application to give directions to a liquidator/remove a liquidator – Test for removal of liquidator – Section 10 of Aliens Land Holding Regulation Act

The second respondent, Leeward Isles Resorts Limited (In Liquidation) ("LIR"), is the registered owner of real property comprising part of a luxury resort in Anguilla, called Cap Juluca. LIR was put into voluntary liquidation by its sole shareholder on 7th November 2012 and on 12th November 2012 the voluntary liquidation was converted to court supervised liquidation and joint liquidators were appointed by order of the court.

By order dated 30th April 2012, the court authorised the joint liquidators to sell certain assets of LIR to the fifth respondents, Mr. Charles Hickox and Ms. Linda Hickox ("the Hickoxes") for $10.3 million (the "Jaques Order"). On 2nd May 2012, pursuant to the Jaques Order, the joint liquidators entered into an agreement with the Hickoxes and the third respondent, Cap Juluca L & C Limited to sell the assets of LIR for the price of $10.3 million (the "SPA"). The assets to be sold included real property registered as West End Registration Section Block 17808B Parcel 11/1. The property was purchased with $6.3 million in cash and the balance was offset against sums owing to the Hickoxes by LIR. The SPA was completed on or about 3rd May 2012 when the joint liquidators received the payment and a signed transfer of land.

On 4th May 2012 the court appointed Mr. John Greenwood ("the Liquidator or "Mr. Greenwood") as the liquidator of LIR in place of the joint liquidators and on 4th

June 2012 the Hickoxes and Cap Juluca L & C Limited assigned its rights under the SPA to a related company, Cap Juluca L & C Properties Limited ("L & C Properties").

The purchaser under the agreement, L & C Properties (as assignee from Cap Juluca L & C Limited and the Hickoxes), is an alien under the Laws of Anguilla. As a result, in order to own Parcel 11/1 L & C Properties has to have a license under the Aliens Land Holding Regulation Act ("the Act"), therefore, the transfer of land could not be registered until the licence was acquired. L&C Properties applied for the licence on 5th September 2012 but has not received it to date. As a result, Parcel 11/1 is still registered in the name of LIR.

On 17th January 2013 the appellants applied to the High Court for removal of the Liquidator or orders directing him to issue proceedings and for a number of declarations. The learned master refused the appellants' application and ordered costs to the respondents. The appellants subsequently applied for and were granted leave to appeal the learned master's decision.

Held: allowing the appeal as to the removal of the Liquidator; refusing the directions sought; setting aside the master's decision; and ordering that the appellants, the first respondent and the sixth respondent have their assessed costs paid out of the assets of LIR, that:

1. When deciding whether to exercise its discretion to remove a liquidator, the court must be satisfied that the retention of the liquidator will be against the liquidation or conversely, that the removal of the liquidator is in the interest of the liquidation. In making this determination, the court should follow a three step process. Firstly, the court must determine whether the applicant has the standing to apply for the removal of the liquidator. This issue is usually uncontroversial and an application by a creditor or contributory will often meet the requirement. Secondly, the court has to decide whether due cause has been shown for the removal of the liquidator. Due cause does not necessarily mean that there is misconduct on the part of the liquidator or unfitness for purpose, but rather, the court should take all the circumstances into consideration and decide whether, on the whole, the liquidator should be removed. Thirdly, if due cause has been shown, the court should then decide whether to exercise its discretion to remove the liquidator. This is a difficult balancing exercise and the court will have regard to the considerations in determining whether the applicant established due cause for the removal of the liquidator, bearing in mind that the court does not lightly remove its own officer and the likely impact of the removal on the professional standing of the liquidator, although these concerns will not be a bar to removal in appropriate cases. The instant appeal was brought by creditors of LIR, which satisfies the standing requirement. However, the Liquidator failed to report to the creditors on the progress of the liquidation and had no acceptable reason for this failure. The Liquidator also failed to comply with section 10 of the Act and lacked vigour in dealing with the issues surrounding the liquidation. As a

result, there was a reasonable loss of confidence in the Liquidator by the creditors. Taking all these circumstances into consideration, the appellants have shown due cause for the removal of the Liquidator.

Nam Tai Electronics Inc. v David Hague et al, Territory of the Virgin Islands, BVIHCVAP2000/0021 followed; Johnson et al v Deloitte and Touché A.G. [1997] CILR 120 applied; In re Marseilles Extension Railway and Land Company (1867) LR 4 Eq 692 applied; Nigel Hamilton-Smith et al v Alexander M. Fundora, Antigua and Barbuda, ANUHCAP2010/0031 followed; AMP Enterprises Ltd v Hoffman and another [2003] 1 BCLC 319 applied; Re Keypak Homecare Ltd [1987] BCLC 409 applied.

2. An appellate court will only upset the exercise of discretion of a judge if it is satisfied that in exercising his or her discretion the judge failed to take into account or gave too little or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations, and that as a result of the error or degree of error in principle, the judge's decision exceeded the generous ambit within which reasonable disagreement is possible and as a result, may be said to be clearly or blatantly wrong. If the appellate court is so satisfied it may exercise its own discretion afresh. In dealing with the application for the removal of the Liquidator the learned master did not deal with the failure of of the Liquidator to cause LIR to apply for a licence under section 10 of the Act; failed to deal with the complaint against the Liquidator's failure to report to the creditors in the reasons for her decision; and did not deal with the issue of delays in the reasons for her decision. Accordingly, the learned master erred in principle in not dealing with these considerations and it was open to the Court to exercise its discretion afresh taking these factors into account.

Dufour and Others v Helenair Corporation Ltd and Others (1996) 52 WIR 188 followed.

JUDGMENT

[1] WEBSTER JA [AG.]: This is an interlocutory appeal against the decision and orders of the learned master dismissing the appellants' application for directions to be given to Mr. John Greenwood, the Liquidator of Leeward Isles Resorts Limited, regarding the conduct of the liquidation of the company, or the removal of Mr. Greenwood as the liquidator of the company.

Background

[2] The second respondent, Leeward Isles Resorts Limited ("LIR"), is the registered owner of real property comprising a part of the luxury resort in Anguilla known as Cap Juluca ("the Resort"). LIR was put into voluntary liquidation by its sole shareholder, Mr Adam Aron, on 7th November 2011. The voluntary liquidation was converted to a court supervised liquidation on 12th November 2011 and Messrs. William Tacon and Stuart McKellar appointed joint official liquidators ("the JLs").

[3] By a further order made on 30th April 2012 the court authorised the JLs to sell certain assets of LIR to the 5th respondents, Charles and Linda Hickox ("the Hickoxes"), for $10.3 million ("the Jaques Order"). Pursuant to the Jaques Order the JLs entered into an agreement with the Hickoxes and the third respondent, Cap Juluca L & C Limited, on 2nd May 2012 to sell the assets of LIR to them for the stated price of $10.3 million ("the SPA"). The assets to be sold comprise real property registered as West End Registration Section Block 17808B Parcel 11/1, personal and intangible properties and the right to manage the Resort, and are referred to in this judgment collectively as "the Properties". The real property is referred to individually as "Parcel 11/1". The purchase price was paid to the JLs in the form of $6.3 million in cash and the balance being offset against amounts owing to the Hickoxes by LIR.

[4] On 4th May 2012 the court appointed the first respondent, Mr John Greenwood ("the Liquidator" or "Mr. Greenwood") in place of the JLs as the liquidator of LIR. Mr. Greenwood was proposed by the Hickoxes.

[5] On 4th June 2012 the Hickoxes and Cap Juluca L & C Limited assigned its rights under the SPA to a related company, Cap Juluca L & C Properties Limited ("L & C Properties").

[6] The appellants, the Hickoxes and the Anguilla Social Security Board have submitted claims in the liquidation. There are suggestions in the evidence that the former manager of the Resort and the Government of Anguilla are also creditors

but the evidence is unclear and they have not submitted claims in the liquidation. I will not treat them as creditors for the purposes of this judgment. This is without prejudice to their right to submit claims in the liquidation.

[7] It is common ground between the parties and abundantly clear that LIR is insolvent and its assets are wholly inadequate to satisfy in full the claims of the creditors. Therefore, it is incumbent on the Liquidator to vigorously pursue all reasonable actions to collect LIR's assets to maximise the amount available for distribution to the creditors.

[8] The purchaser under the SPA, L & C Properties (as assignee from Cap Juluca L & C Limited and the Hickoxes), is an alien under the laws of Anguilla and must have a licence under the Aliens Land Holding Regulation Act ("the Act")[1] to own Parcel 11/1. The SPA is not in any way conditional upon L & C Properties receiving a licence under the Act. The SPA was completed on or about 3rd May 2012 when the purchasers paid the purchase money to the JLs and received a signed transfer of land. That transfer cannot be registered until L & C Properties receives the required licence under the Act. It applied for the licence on 5th September 2012[2] but to date it has not received it. As a result, Parcel 11/1 is still registered in the name of LIR.

[9] On 17th January 2013 the appellants applied to the High Court seeking the removal of the Liquidator or orders directing him to issue proceedings seeking declarations that:

(a) LIR is entitled to rescind the SPA and retain or recover all monies it is entitled to retain or recover under the SPA;

(b) by reason of the unlawful trust relationship created by the SPA and the application of the Trusts Act[3] LIR is entitled to be constituted the legal and beneficial owner of the real estate comprised in the SPA;

[1] Cap. A55, Revised Laws of Anguilla 2010.
[2] Pursuant to para. 22 of the affidavit filed by Mr. Charles Hickox dated 13th February 2013.
[3] Cap. T70, Revised Laws of Anguilla 2010.

(c) by reason of the said unlawful trust LIR is entitled to be constituted the legal and beneficial owner of the rights to administer, operate and manage the Resort; and

(d) by reason of the rescission or termination of the SPA or the unlawful trust LIR is entitled to be constituted legal and beneficial owner of all other rights in the real and personal property comprised in the SPA that are not capable of severance and other orders following the declarations.

[10] The application was heard by the learned master on 18th March 2013. On 2nd October 2013 she delivered her written decision ("the Decision") in which she dismissed the application and ordered the appellants to pay the costs of the application to the respondents.

[11] On 4th December 2013 the appellants were granted leave to appeal against the master's decision. The notice of appeal was filed on 11th December 2013.

Related Litigation

[12] It is helpful at this stage to mention other related litigation between the parties:

(a) Civil Appeal No. 2 of 2012 against the Jaques Order authorising the JLs to sell the Properties to the Hickoxes for $10.3 million. The Court of Appeal allowed the appeal on 24th April 2013 and set aside the Jaques Order. On 25th June 2014 this Court gave the Hickoxes leave to appeal to the Privy Council.

(b) Civil Appeal No. 11 of 2013 by the Brilla parties[4] seeking to set aside the SPA on account of breaches by the Hickoxes ("the Set Aside Application"). The claim was filed on 11th June 2012 and on 13th December 2013 the learned master granted a stay of the claim pending

[4] The Brilla parties who applied to set aside the SPA in AXAHCVAP2013/0011 are Brilla Capital Investment Master Fund SPC Limited (A Cayman Island segregated portfolio company, for and on behalf of Brilla Cap Juluca Segregated Portolio M, a segregated portfolio thereof) and Anguilla Hotel Investors Limited.

the outcome of Civil Appeal No. 2 of 2012 referred to above. The Brilla parties appealed against the order granting the stay. On 27th June 2014 this Court dismissed the appeal and confirmed the stay pending the outcome of what had by then become an appeal by Hickoxes to the Privy Council.

Grounds of Appeal

[13] The grounds of appeal are set out in copious detail in 24 pages of the notice of appeal. In dealing with them I will do as counsel for the appellants did in his main skeleton argument and follow the general scheme of the grounds rather than set them out in detail and deal with them *seriatim*. I will deal with the complaints in the grounds under the following general headings:

(a the learned master's failure to give reasons for her decision;
(b) the master's refusal to remove the Liquidator;
(c) the master's refusal to issue directions to the Liquidator.

Failure to give reasons for decisions

[14] Counsel for the appellants, Mr. Robert Levy, QC, submitted in his written and oral submissions that the learned master erred in that she failed to give reasons for the findings in the decision. There is no doubt that a hearing judge is required to give reasons for his or her decision. The reasons for this are obvious and were summarised by Gordon JA in Amazing Global Technologies Limited v Prudential Trustee Company Limited[5] referring to his own judgment in IPOC International Growth Fund Limited v LV Finance Group Limited et al,[6] as follows:

> "Before the Court of Appeal in England, both parties [in the Flannery case] accepted that there was adequate evidence for the trial judge to have come to a conclusion in favour of either party, but, as the Court of Appeal commented, the judgment was "entirely opaque. It gives the judge's

[5] Territory of the British Virgin Islands, BVIHCVAP2008/0008 (delivered 4th May 2009, unreported) at para. 8.
[6] Territory of the British Virgin Islands, BVIHCVAP2003/0020, BVIHCVAP2004/0001 (delivered 19th September 2005, unreported).

> conclusions but not his reasons for reaching that conclusion." The Court of Appeal went on to make a number of general comments on a judge's duty to give reasons which are summarised below.: (i) The first reason for a judge to give reasons for a decision is that the duty is part of due process, and therefore of justice. The rationale of that statement has two principal aspects. Firstly, the parties should be left in no doubt as to why they have lost or won, especially the losing party. Without reasons given, the losing party is in no position to know whether the court has misdirected itself, and thus whether he may have an available appeal. The second is that the giving of reasons concentrates the mind of the judge. (ii) The first principal aspect recited above, that the parties be left in no doubt as to why they have lost or won, "implies that want of reasons may be a good self standing ground of appeal." If it is impossible to tell whether the trial judge has gone wrong on the facts or the law, the losing party would be deprived of his chance of appeal unless the appellate court entertains an appeal based on the lack of reasons itself. (iii) The extent of the duty to give reasons will depend on the complexity of the matter to be resolved. It may be enough where there is a straightforward dispute as to simple fact after summarizing the evidence for the judge to simply state that one version of the facts is preferred to another. However, where the dispute is more complex, and both sides have canvassed differing analyses of the circumstances, the judge must explain why one side is preferred to the other. The learning expressed in Flannery is gratefully adopted in this jurisdiction."

Gordon JA went on to observe that –

> "Implicit in this statement[7] of trite law is the requirement that the appellate court must have access to the reasoning of the trial court. Absent that reasoning, then the appellate is forced to apply, de novo, its own reasoning and hence its own discretion to the circumstances of the case."[8]

[15] The passages cited above highlight the importance of the judge providing reasons for his or her decision. The amount of detail that should be given will depend on the circumstances of the case and no rigid guidelines or tests should be established. If the judge does not provide reasons, or sufficient reasons, this gives the appellant a free standing ground of appeal, which if successful, will result in either remitting the case to the trial court for a retrial as in Flannery and Another

[7] Referring to Lord Wolf MR in AEI Rediffusion Music Ltd. v Phonographic Performance Ltd. [1999] 1 WLR 1507 at 1523.
[8] At para. 10.

v Halifax Estate Agencies Ltd. (trading as Colleys Professional Services),[9] or the Court of Appeal dealing with the issue de novo without the benefit of having the trial judge's opinion on the issues as in the Amazing Global Technologies case.

[16] The learned master's reasons for dismissing the application for directions are set out in paragraphs 69 to 74 of the Decision. In summary, the master decided that the Jaques Order was central to the application and that the application was inextricably linked to the Jaques Order, the provisions of the SPA and the sale of the Properties. Further, that the application seems to be an appeal against the Jaques Order, there are common issues, and it would not be a good use of the courts resources to entertain the application. Finally, there was the risk of conflicting decisions with any decision made by the Court of Appeal (now the Privy Council) as well as the High Court on the strike out application.

[17] In dealing with the removal of the Liquidator the learned master set out in paragraph 76 six of the bases for removal put forward by the appellants and dealt with some of them, albeit in a summary way, in the next 12 paragraphs. She accepted the Liquidator's evidence and applied the test for removal in Re Edennote Ltd.[10] that the applicant must prove that retaining the Liquidator would be against the interest of the liquidation, and followed the three stage test for removal propounded by the Court of Appeal of the Cayman Islands (per Georges JA) in Johnson et al v Deloitte and Touche A.G.[11] and decided to exercise her discretion in favour of retaining Mr. Greenwood even though "[he] may not have performed his role as admirably as he should..."[12]

[18] The two preceding paragraphs show that the master gave reasons for her decisions on the two applications that were before the court. The reasons may or may not have been correct, they may not have been detailed, and there are issues

[9] [2000] 1 WLR 377.
[10] [1996] BCC 718.
[11] [1997] CILR 120 – see below at para. 22.
[12] At para. 88 of the Decision.

that were not dealt with such as the allegation that LIR was holding the legal title to Parcel 11/1 on an illegal trust. However, the reasons provided did give the appellants sufficient information for them to know why the master dismissed the application. It is now for this Court to review the exercise of her discretion in not removing Mr. Greenwood and her findings in refusing the directions sought. If there are issues that she did not deal with in her reasons they will be considered in assessing how she made her findings and exercised her discretion.

[19] I will now deal with the two major issues in the appeal, namely: the application to remove Mr. Greenwood and the application for directions.

Removal of the Liquidator

Jurisdiction

[20] The court's power to remove a liquidator is a statutory power that has been a part of the UK Companies Act since the mid-19th century. The time-honoured phrase that has been used in the Companies Acts over the years is that the court can remove a liquidator "on due cause shown". The power to remove liquidators is included in the companies legislation of most Eastern Caribbean states but, remarkably, not Anguilla. However, there is no doubt that the High Court of Anguilla has the power to remove a liquidator, and in my opinion when it does so, it is not exercising a statutory power, but its inherent jurisdiction based on the facts that:

(a) liquidators are appointed by the court to carry out the court's statutory function of winding up the affairs of a company. Implicit or inherent in that appointment must be the court's power to regulate the conduct of the liquidator, including the power to remove and replace him; and

(b) liquidators appointed by the court are officers of the court and are subject to control by the court.[13] That control must include the power to remove the liquidator.

[13] Per Lord Millett in Deloitte & Touche A.G. v Johnson and Another [1999] 1 WLR 1605.

Test for Removal

[21] The circumstances that the courts have to deal with in applications to remove liquidators are so diverse that it is difficult to identify a single or simple test for what is the proper basis for removal. The guiding principle that emerges from the English and Eastern Caribbean cases is that the court must be satisfied that the retention of the liquidator would be against the interest of the liquidation, or conversely, that the removal of the liquidator is in the interest of the liquidation. This principle was adopted by this Court in Nam Tai Electronics Inc. v David Haque et al[14] by Matthew JA at paragraph 40 of the unanimous judgment of the Court -

> "The governing principle to be gleaned from the authorities is that the Court must satisfy itself on the evidence that the retention of the liquidator would be against the interest of the liquidation."

[22] In achieving this principle the courts of the Eastern Caribbean have followed the three step process for dealing with applications to remove liquidators established in Johnson et al v Deloitte and Touche A.G. The steps are set out by Georges JA at pages 145 to 146 –

> "A review of the cases establishes that the process of resolving an application for the removal of a liquidator raises three stages: (a) Does the applicants have the locus standi to apply? (b) Has due cause been shown and (c) If such cause has been shown, should the court exercise its discretion and remove the liquidator? The issues as to whether or not due cause has been shown and whether the discretion should be exercised are far more frequently canvassed than the issue of standing. That issue is often uncontroversial, the application being usually made by a creditor or contributory."

[23] The three step process was accepted and applied by this Court in the Nam Tai Electronics Inc. case, by the High Courts of Grenada and Antigua and Barbuda in Patrick Thomas et al v Thomas Real Estate Company Ltd et al[15] and in Alexander M. Fundora v Nigel Hamilton-Smith et al[16] respectively, and by the

[14] Territory of the British Virgin Islands, BVIHCVAP2000/0021 (delivered 26th March 2001, unreported).
[15] Grenada, GDAHCV2001/0653 (delivered 1st July 2011, unreported) per Henry J. at para. 13.
[16] Antigua and Barbuda, ANUHCV2009/0149 at para. 173.

learned master in this case.[17] In my opinion it is a workable test that covers the preliminary issue of status and the more unwieldy concept of due cause, and then incorporates the guiding principle of what is in the interest of the liquidation in the third step. I will follow the three step process in this case.

Standing

[24] LIR is insolvent and the appellants are creditors of the company. As such they have a legitimate interest in the choice of liquidator and standing to bring the application. This is not disputed.

Due Cause

[25] The second step in the removal process is whether the appellants have established that there is due cause for removing Mr. Greenwood.

[26] The expression "due cause" has its origins in the English Companies Acts and the cases have established that due cause does not mean that there has to be any misconduct by the liquidator. As long ago as 1867 in In Re Marseilles Extension Railway and Land Company[18] Sir R. Malins, VC, in dealing with due cause, said-

> "…the Court may take all the circumstances into consideration, and if it finds that it is, upon the whole, desirable that a liquidator should be removed, it may remove him."[19]

Edwards JA expressed a similar view in Nigel Hamilton-Smith et al v Alexander M. Fundora[20] (on appeal) when she said –

> "It is a basic concept of the law governing liquidation that the court may remove a liquidator and appoint another if there is "cause shown" by the applicant for his removal. It is not normally necessary to demonstrate personal misconduct or unfitness for this purpose."[21]

[17] Paras. 87 and 88 of the Decision.
[18] (1867) LR 4 EQ 692.
[19] At p. 694.
[20] Antigua and Barbuda, ANUHCVAP2010/0031 (delivered 31st August 2010, unreported).
[21] At para. 6.

[27] The learned master accepted that the governing principle in a removal application is that the retention of the liquidator would be against the interest of the liquidation and went on to find that the retention of Mr. Greenwood would not be against the interest of the liquidation. She rejected the evidence of Mr. Adam Denmark Cohen[22] for the appellants that Mr. Greenwood was not independent and favoured the Hickoxes. She accepted Mr. Greenwood's evidence that he is actively involved in trying to get the Aliens Land Holding Licence (for L & C Properties) but his efforts have been frustrated. She acknowledged that Mr. Greenwood could have asked the court for directions but his failure to do so does not merit his removal. Finally, she found that the appellants have not passed the second and third stages of the test propounded by Georges JA in Johnson et al v Deloitte and Touche A.G. and exercised her discretion by not removing Mr. Greenwood.

[28] The appellants' case is that they have established due cause for the removal of the Liquidator on several grounds including:

(a) failing to report to the unsecured creditors of LIR, and to the court, in a timely manner;

(b) failing to apply for an Aliens Land Holding Licence under section 10 of the Act thereby exposing LIR to an allegation of illegality;

(c) failing to rescind the SPA and to forfeit monies due to LIR under the SPA;

(d) bias in favour of the Hickoxes;

(e) unacceptable delays in:

(i) distributing the estate of LIR to the unsecured creditors;

(ii) finding out that L & C Properties needed a licence to take title to the Parcel 11/1; and

(iii) pursuing L & C Properties' application for an Aliens Land Holding Licence;

(iv) failing to pursue the issues in the liquidation with vigour;

(v) loss of faith and confidence in the Liquidator by the unsecured creditors.

[22] The Managing Director of the first named appellant.

I will now deal with those allegations in detail.

Failing to report

[29] LIR is insolvent and therefore its unsecured creditors have a vested interest in the conduct of the liquidation in that they are the only persons entitled to share in the ultimate distribution of the company's assets. If authority is needed for this basic proposition it can be found in the advice of the Privy Council delivered by Lord Millett in Deloitte & Touche A.G. v Johnson and Another.[23]

[30] The creditors are entitled to receive updates from the Liquidator on the progress of the liquidation in the form of reports and meetings. The undisputed evidence is that the Liquidator has not held meetings nor issued reports. The first account of his handling of the liquidation is in his affidavit filed on 13th February 2013 in response to the appellants' application to remove him as the liquidator filed on 17th January 2013. This is not a report to the creditors even though the creditors who had submitted claims are involved in the litigation and the affidavit would have provided them with some information on the progress of the liquidation. His first report to the creditors is dated 20th June 2014 and is exhibited to his second affidavit in this appeal filed on 23rd June 2014. This was three days before the hearing of the appeal and more than two years after his appointment on 4th May 2012.

[31] The delay is magnified by the fact that the Liquidator is required under section 223 of the Companies Act[24] to apply to the court within one year of his appointment for approval of his final accounts and distribution of the assets, or for an extension of time to make the application. Mr. Greenwood is obviously not in a position to present final accounts and apply to the court under section 223, but he has not applied for an extension of time to make the application. He has simply ignored the requirements of the section.

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[23] [1999] 1 WLR 1605.
[24] Cap. C65, Revised Laws of Anguilla 2010.

[32] Mr. Greenwood's explanation for not reporting to the creditors are, firstly, avoiding the added expense to the liquidation of producing the reports, and secondly, his belief that the creditors are aware of the progress of the liquidation from their involvement in the litigation.

[33] The learned master in the Decision did not deal with the issue of reporting which leaves it open to this Court to express its own views on the issue. I do not find that the expense of producing reports is a good reason for not producing the reports especially in this case where Mr. Greenwood says that there was not very much to report anyway. The cost of producing reports would not have added significantly to the expenses of the liquidation.

[34] The second reason for not reporting, though less egregious, is also unacceptable. Mr. Christopher Pymont, QC, who appeared for the Liquidator, submitted that the matter that is delaying the progress of the liquidation is the on-going litigation between the parties which in turn is holding up the Government's consideration of the L & C Properties' application for the Aliens Land Holding Licence. Further, the only creditors who have submitted claims are the appellants, the Hickoxes and the Social Security Board. They are parties to the litigation and are fully aware of the progress of the litigation, and any report to them would be to update them on the status of the litigation.

[35] The flaw in this argument is the underlying assumption that the unsecured creditors' interest is limited to the state of the on-going litigation. In every insolvent liquidation the creditors are interested in the financial issues in the liquidation and they are usually informed of these issues by periodical reports by the liquidator. For example, the Liquidator's first report in June 2014 discloses that he has spent $609,368.21 on legal fees and $547,174.29 on his own fees. The report does not give details of how the fees were incurred and there is no evidence that the Liquidator has applied to the court for an interim order approving the payment of the fees. It seems that he has simply paid himself and his lawyers and will in due course apply to the court to sanction the payments. It is not surprising that

Mr. Levy, QC criticised these payments in his oral submissions (having found out about them only days before the hearing). It all points to the fact that the creditors' involvement in the litigation is not a good reason for not reporting to them from time to time during the liquidation.

[36] In the circumstances I find that the Liquidator did not report to the creditors on progress of the liquidation and his reasons for not reporting to them are not acceptable.

LIR's Section 10 Licence

[37] Section 10 of the Act imposes restrictions on persons holding land on trust in favour of aliens. Where land is so held the trustee must apply under the section for a licence to hold the legal title to the land on trust for the alien. Section 10 reads:

> "(1) No person shall without the licence of the Governor in Council hold any land in trust for an alien, and any land so held shall be liable to be forfeited to the Crown.
>
> (2) Any person who contravenes this section is guilty of an offence and on summary conviction is liable to a fine of $25,000 or to imprisonment for a term of 6 months or to both.
>
> (3) In this section, "trust" includes any arrangement whether written or oral, express or implied, and whether legally enforceable or not, whereby any land to which this section applies or any interest therein or any rights attached thereto is or are held for the benefit, or to the order, or at the disposal, of an alien, but does not include –
>
> (a) the duties incident to a mortgage;
>
> (b) the duties of a vendor to the purchaser pending payment of the purchase money, or after payment of the purchase money, if within 3 months after that payment, the property sold is vested in the purchaser or his interest therein is extinguished;
>
> (c) the duties of a trustee in bankruptcy to the bankrupt or his creditors; or

(d) the duties of a trustee for the purpose of any composition or scheme or arrangement for the payment of debts to the debtor or his creditors."

It is abundantly clear that section 10 was intended to cause persons who hold land on trust for aliens to apply for a licence as trustee. A vendor who has completed a sale of land to an alien but continues to hold the legal title is doing so as a trustee for the purchaser and must apply for a licence under the section. Sub-section (3) creates an exemption if the vendor has not been paid for the land and for up to three months after he has been paid. Once he is paid and the three month period expires the vendor is no longer exempt from the requirements of the section and must apply for a licence.

[38] On 3rd May 2012 LIR transferred Parcel 11/1 to Cap Juluca L & C Limited and received the purchase money. Parcel 11/1 is still registered in LIR's name and clearly is held on trust for L & C Properties within the meaning of section 10. As of 3rd August 2012 when the exemption provided by paragraph (b) of sub-section (3) expired LIR has been holding Parcel 11/1 on trust for the Hickoxes in breach of section 10 of that Act.

[39] On 15th November 2012 the Chief Minister of Anguilla wrote to Mr. Greenwood advising him that the Government was aware that L & C Properties had acquired Parcel 11/1 but did not have an Aliens Land Holding Licence to take title to the property. The letter specifically drew Mr. Greenwood's attention to the fact that LIR still had the legal title to the property and that LIR was holding that title in trust for L & C Properties in breach of section 10 of the Act. The letter concluded with the warning:

> "As liquidators to Leeward Isles Resorts Limited you are holding the land in trust for an alien contrary to section 10 of the ALHRA.
>
> This situation needs to be resolved as soon as possible. Please contact us as soon as possible to indicate your proposed resolution."

This letter was signed by Chief Minister, the Hon. Hubert B. Hughes.

[40] The Liquidator is an officer of the court and should not place himself in a position where he could be breaking the law. Mr. Pymont, QC's submissions on this point are to the effect that it is for the Hickoxes to get a licence and that the Liquidator has a strategy, based on legal advice, to resolve the situation and he will consider alternatives if the matter reaches an impasse. But none of these submissions addresses the point that LIR needs its own licence to hold Parcel 11/1 as trustee pending the grant of the section 4 licence to L & C Properties which that company had applied for in September 2012. The evidence is that upon receiving the Chief Minister's letter Mr. Greenwood entered into negotiations with the Government to secure the grant of the licence to L & C Properties. His efforts were not successful and up to the date of the hearing of this appeal in June 2014 L & C Properties had not received the licence. What is more important is that Mr. Greenwood has not taken any steps to obtain a licence for LIR to hold the title to Parcel 11/1 as trustee pending the receipt by L & C Properties of its own licence.

[41] Mr. Allan Wood, QC for the Hickoxes took a different approach. His submission is that section 10 applies where the owner of the property continues to hold the property with the intention of breaching the Act and the section does not apply when the alien buyer has applied for and is awaiting the grant of a licence to take title to the property. LIR is undoubtedly holding the title to Parcel 11/1 on trust for L & C Properties, and having accepted the purchase money in May 2012 is caught by the section once the three month period expired in August 2012. I repeat that section 10 is meant to ensure that sellers of land transfer the land within three months of receiving the purchase money. If it is necessary to retain the legal title beyond three months they must apply for a licence as trustee. The buyers' application under section 4 of the Act does not obviate the need for a section 10 licence. Therefore, I reject Mr. Wood's submission that a paid seller is not in breach of the section if the buyer has applied for a licence under section 4. The offence is completed once the seller receivers the purchase money and does not apply for a licence within the three month exemption period.

[42] The learned master did not deal with this aspect of the appellants' case. In paragraphs 77 to 81 she dealt with Mr. Greenwood becoming aware of the fact that L & C Properties did not have a licence to take title to Parcel 11/1 and accepted as reasonable his efforts to progress L & C Properties' application through the Government channels once he became aware of the situation. But she did not go on to deal with the Liquidator's failure to remedy the alleged breach of section 10 of the Act by LIR that was pointed out to him by the Chief Minister in November 2012. This leaves it open to this Court to make its own findings on the issue.

[43] Having reviewed the written and oral submissions of the parties I find that:

(a) LIR is holding the legal title to Parcel 11/1 on trust for L & C Properties in breach of section 10 of the Act;

(b) the property is liable to be forfeited to the Crown under sub-section (1) of section 10 and LIR can be prosecuted for a breach of the section, and, if convicted, is liable to a fine of up to $25,000.00; and

(c) the Liquidator has delayed unreasonably in applying for a licence under section 10 of the Act. In fact, he has not applied for a licence and has shown no intention of doing so, adopting instead a wait and see attitude to L & C Properties' application for a licence, which, if granted, would cure LIR's potential illegality.

[44] I do not accept the Liquidator's submission that the risk of forfeiture does not affect LIR because it has been paid in full for the Properties and the risk is therefore with the Hickoxes exclusively. If the property is forfeited on account of LIR's breach of section 10 this may expose LIR to claims for the return of the purchase money and for damages by the Hickoxes. Further, Parcel 11/1 is subject to subleases that may be lost if the property is forfeited[25] and this would expose LIR to claims by the

[25] Great Western Railway Company v Smith [1875] 2 Ch D 235; Viscount Chelsea and another v Hutchinson [1994] 2 EGLR 61.

sub-lessees. Finally, LIR would also lose the option of re-selling the Properties to a third party if the Government refuses L&C Properties' application for a licence to own Parcel 11/1.

[45] In any case the Liquidator is an officer of the court and should not be content to continue in a situation where the company to which he owes fiduciary duties remains in a position of not complying with the clear requirements of the law.

Rescission of the SPA

[46] The appellants submit that another reason for removing the Liquidator is his failure to take steps to rescind the SPA and re-sell the Properties to another buyer. Their initial position as set out in the application before the master was that the Liquidator should seek a declaration from the court that LIR is entitled to rescind the SPA. Their positon changed in paragraph 35 of their skeleton argument before this Court where they submitted that "... the court may consider that a direction for immediate proceedings to be brought [to rescind the SPA] is premature…" Mr. Levy, QC did not address the issue of the directions at the hearing and relied on his written submissions. The appellants therefore maintained their challenge to the Liquidator's action, or more accurately, his failure to take action to rescind the SPA.

[47] The courts have shown a general reluctance to set aside the actions of a liquidator unless fraud or bad faith is proved, or if the act of the liquidator is so utterly unreasonable and absurd that no reasonable person would have done it.[26] In my opinion this principle applies equally to a challenge of inaction by the liquidator which, in this case, is his decision not to take steps to rescind the SPA.

[48] I have considered the following circumstances surrounding the Liquidator's decision not to take steps to rescind the SPA, namely:

[26] Per Plowman, J in Leon v York–O-Matic Ltd. and Others [1966] 1 WLR 1450 followed by Nourse LJ in Re Edennote Ltd. at p. 396.

(a) the Hickoxes' obligation to obtain an Aliens Land Holding Licence is not a condition of the SPA, and it is not apparent that they are in breach of the SPA in not registering the title;

(b) L & C Properties applied for a licence in September 2012 and is awaiting approval from the Government;

(c) LIR has been paid in full for the Properties.

Further, there is no allegation of fraud or bad faith against Mr. Greenwood. In my opinion his decision not to embark on the obviously risky and expensive course of litigation to set aside the SPA falls far short of being a decision that is so utterly unreasonable that no reasonable liquidator would make it. I do not regard his decision not to pursue the matter as a good reason for terminating his appointment.

Liquidator's Bias

[49] The allegation of bias against the Liquidator is that (1) he was proposed by the Hickoxes, and (2) having been appointed he communicated with them and not the other creditors.

[50] The first point is devoid of merit. Where experienced insolvency practitioners like Mr. Greenwood are appointed by the court, the court will not infer bias by the liquidator in favour of the person who proposed the liquidator. This was made clear in the Re Edennote case where Nourse LJ rejected a similar suggestion saying that –

> "In so far as it implies any actual or potential lack of impartiality on their part, it is clear that it is wholly unjustified."[27]

[51] The second point is also without merit. The reality of this case is that the Resort was purchased by the Hickoxes and they were allowed into possession by the Liquidator to run the Resort. As such the Liquidator is bound to communicate with them from that time in order to carry out his duties as liquidator. The fact that he

[27] At p. 126.

did not communicate with the other creditors is not excusable but it does not mean that he is biased against them or in favour of the Hickoxes.

[52] Finally, the learned master rejected the appellants' evidence of bias and with it the allegation of bias. I do not see any reason why this Court should interfere with that finding of fact by the master.

Delays

[53] The authorities establish that a liquidator is required to proceed with the liquidation of the company in an expeditious and efficient manner. It is not enough to adopt a complacent attitude and wait for things to happen. He must do all that is reasonably possible to make things happen. In short, he must carry out his duties with vigour. In Re Keypak Homecare Ltd[28] Millett J recognised that the liquidator was an experienced and independent professional and that no misconduct was alleged against him. However, the creditors were unhappy with his complacency and lack of vigour in pursuing claims against the directors of the company and therefore removed him. Millet J's approach to the removal of the liquidator is summed up in the following passage –

> "In the present case I approach the matter in this way. There is nothing that can be said against Mr. Edgar so far as his personal propriety is concerned. There is no evidence of any misconduct or wrongdoing on his part or of his intimacy or friendship with the directors of the company at all. He is a professional, independent, and experienced liquidator. But I am not impressed by his performance in the conduct of this liquidation. I take the view that his experience, gained in times when liquidators were accustomed to directors simply removing the stock before liquidation and then paying for them afterwards at forced-sale values, has stood him in ill stead. As a result, he has adopted a relaxed and complacent attitude to such conduct, and in my judgment the creditors, who were outraged by what they believed had happened, were perfectly reasonable in the view that Mr. Edgar was not likely to pursue the directors with anything like sufficient vigour. If that was the view they adopted at the meeting, then it has been amply confirmed by all that has taken place since I, too, take the view that Mr. Edgar is unlikely to pursue the directors with anything like sufficient vigour."[29]

[28] [1987] 3 BCC 558.
[29] At p. 564.

[54] Mr. Greenwood was appointed on 4th May 2012, the day after the SPA was completed and the cash portion of the sale price amounting to $6,300,000 paid to the JLs. The JLs paid the net proceeds of sale over to Mr. Greenwood. At that stage Mr. Greenwood was entitled to believe that registration of the transfer for Parcel 11/1 would not be an issue. LIR had been paid the full balance of the purchase price for the Properties and the SPA was not in any way conditional upon L & C Properties obtaining a licence. Not long thereafter, on 11th June 2012, the appellants applied to set aside the SPA. This would have caused any reasonable liquidator to put a hold on plans to make a distribution to the creditors from the sale of the Properties pursuant to the SPA and I accept the explanation given in his report dated 20th June 2012 that this is the reason why it would have been appropriate for him to make a distribution.

[55] However, the challenge to the SPA is not a good reason for not enquiring into the status of the registration of the transfer of Parcel 11/1. As a prudent liquidator Mr. Greenwood should have been aware that LIR could not hold the legal title to Parcel 11/1 for more than three months after receiving the purchase money and he should have made enquiries about the registration of the transfer to ensure that LIR was compliant with the requirements of the Act. Such enquiries would have disclosed that L & C Properties did not have a licence and that LIR had to apply for a section 10 licence once the three month exemption in sub-section (3) expired in August 2012. In this respect there was unreasonable delay by the Liquidator.

[56] The appellant's also complain that the Liquidator has not tried to force the Government's hand to grant a licence to L & C Properties to own Parcel 11/1. Instead, he has adopted a "wait and see" attitude. This complaint is not justified for at least three reasons, namely:

(a) as stated above the SPA was not conditional upon L & C Properties obtaining a licence;

(b) the evidence discloses that Mr. Greenwood made several attempts to meet with the Government officials and generally tried to move the licensing process forward; and

(c) in any event the onus of getting that licence falls squarely on the purchaser of the property, L & C Properties.

There was no unreasonable delay in pursuing L & C Properties' application for a licence.

Failing to pursue issues with vigour

[57] While I do not accept the appellants' submission that the Liquidator is guilty of unreasonable delays (except in enquiring about the registration of the transfer of Parcel 11/1), different considerations apply to his approach to the overall situation of LIR not having a section 10 licence and his willingness to await the decision of the Government on L & C Properties' licence application.

[58] As far as the section 10 licence goes I have already expressed the view that Mr. Greenwood's failure to cause LIR to apply for a licence to hold the legal title to Parcel 11/1 in trust for L & C Properties exposed LIR to a charge of breaching the Act. Mr. Greenwood adopted a relaxed attitude to the situation opting to await the outcome of L & C Properties' application for a licence. There is no clear indication when the Government will deal with L & C Properties' application and there is nothing in the evidence to suggest that a decision is imminent. In the meantime nothing is happening to progress the liquidation of LIR. This is the type of conduct that Millet J must have had in mind when he described the liquidator in the Re Keypak Homecare Ltd case as having a "relaxed and complacent attitude." I think that Mr. Greenwood's approach to the issues in the liquidation surrounding the registration of Parcel 11/1 lacks the vigour that is expected of a liquidator administering an estate worth several million dollars.

Loss of faith

[59] The appellants' loss of confidence in Mr. Greenwood is obvious by the very fact they have applied to the court to remove him.

[60] The Social Security Board is a creditor of LIR to the tune of approximately $1 million. It submitted a claim in the liquidation and on 13th February 2013 filed an affidavit in support of the application to remove Mr. Greenwood. The deponent, Mr. Alkins Rogers, deposed that he has heard nothing from Mr. Greenwood since filing the Board's claim, he had not seen a report and he supports the application to remove Mr. Greenwood. It is clear that the Board has also lost confidence in Mr. Greenwood.

[61] In dealing with the issue of loss of confidence Nourse LJ said in Re Edennote Ltd. case:

> "… Sir John Vinelott said that the principle in [Re Keypak Homecare Ltd] was founded on and usefully illustrated the general principle that a liquidator must act in the interests of the general body of creditors and should not continue in office if in the circumstances the creditors no longer had confidence in his ability to realise the assets of the company to their best advantage and to pursue claims with due diligence. Again I respectfully agree. But there is an important qualification... The creditors' loss of confidence must be reasonable. Moreover, the court does not lightly remove its own officer and will, amongst other considerations, pay a due regard to the impact of a removal on his professional standing and reputation."[30]

For reasons set out above, I find that the creditors' loss of confidence in Mr. Greenwood is reasonable.

Conclusion on Due Cause

[62] Based on my findings in relation to the Liquidator's failure to report to the creditors, to apply for a section 10 licence, to pursue the matters in the liquidation with vigour, and the creditors' loss of confidence in him, I make the further finding that the appellants have established by the evidence due cause for the removal of the Liquidator. The final step is to decide if the Liquidator should be removed.

[30] At p. 725.

Exercise of the court's discretion

[63] A finding of due cause does not mean that the court will automatically remove a liquidator. The court must then carry out what Neuberger J described as a "difficult balancing exercise" in AMP Music Box Enterprises Ltd v Hoffman and Anor:[31]

> "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."[32]

In carrying out the balancing exercise the court will have regard to the appropriate considerations in determining whether the applicant has established due cause for the removal of the Liquidator, as well as the fact that it does not lightly remove its own officer and will consider the impact of the removal on his professional standing.[33] However, this latter concern is by no means a bar to removal in a proper case. For example in Re Keypak Homecare Ltd[34] Millett J paid due regard to the fact that the liquidator was an independent and experienced professional against whom no wrongdoing or impropriety had been alleged. Nonetheless, Millett J removed him because he was not pursuing the former directors of the company with sufficient vigour.

[64] Another important consideration is that this is an appeal against the exercise of a discretion by the learned master and this Court will set aside the exercise of that discretion and exercise its own discretion only if -

> "… the appellate Court is satisfied (1) that in exercising his or her judicial discretion, the judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant

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[31] [2003] 1 BCLC 319.
[32] At p. 1001.
[33] Per Nourse LJ in Re Edennote Ltd. at p. 775 followed by Matthew JA in the Nam Tai Electronics Inc. case at para. 40.
[34] At p. 564 and see para.53 above.

> factors and considerations and (2) that, as a result of the error or the degree of the error, in principle the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong."[35]

In dealing with the application to remove Mr. Greenwood the learned master:

(a) did not deal with LIR's failure to apply for a licence under section 10 of the Act and the resulting holding of the Parcel 11/1 by LIR as a trustee in breach of the section;

(b) although she mentioned in paragraph 76 of the decision Mr. Greenwood's failure to report to the creditors as one of the appellants' grounds of complaint, she did not deal with the complaint in the reasons for her decision; and

(c) did not deal with the issue of delays.

In my considered opinion the leaned master erred in principle in not dealing with these important matters and consequently failed to exercise a proper judicial discretion. This is sufficient to allow this Court to exercise its own discretion in considering the application to remove the Liquidator.

Conclusion on removal

[65] The Liquidator is an experienced insolvency practitioner based in the British Virgin Islands with the highly reputable firm of Baker Tilly. He has been involved in several major insolvencies in that Territory and also in the rest of the Eastern Caribbean. There is no allegation of wrongdoing in his conduct of the liquidation and I have confirmed the master's finding of impartiality. However, his failure to report to the creditors and the court, to apply for a section 10 licence to regularise LIR's situation as a trustee, and his general lack of vigour in pursuing these matters, have resulted in a loss of confidence by the creditors and a general feeling that retaining him as liquidator is not in the interest of the liquidation. I would order his removal.

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[35] Per Sir Vincent Flossaic CJ in Dufour and Others v Helenair Corporation Ltd and Others (1996) 52 WIR 188 at pp. 190-191.

[66] The Liquidator has adopted a wait and see attitude and apart from the ongoing litigation nothing is happening in the liquidation. Therefore I do not think there will be any serious problems or excessive expenses with the transition to a new liquidator.

[67] The appellants have proposed that Mr. Marcus Wide, a member of the Canadian Institute of Chartered Accountants and the Canadian Association of Insolvency and Restructuring Practitioners, a BVI licensed insolvency practitioner and the managing director of the firm of Grant Thornton British Virgin Islands Limited, be appointed in place of Mr. Greenwood. I have reviewed Mr. Wide's credentials and I am satisfied that he is a fit and proper person to be appointed as the new liquidator of LIR.

The Directions Application

[68] The first direction sought by the appellants[36] seeks an order directing Mr. Greenwood to take steps to rescind the SPA and retain or recover all monies it is entitled to retain or recover under the SPA. Having regard to my findings above that the court should not direct the Liquidator to take steps to rescind the SPA[37] and the later finding that he should be removed as Liquidator,[38] I would refuse this direction.

[69] The other three directions seek declarations that LIR should be declared the legal and beneficial owner of the properties based on the rescission or termination of the SPA, or on the unlawful trust relationship created by the SPA and the application of the Trusts Act. . These directions were not pursued in the written and oral submissions and I would also refuse them.

Orders

[70] I would allow the appeal and make the following orders:

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[36] See para. 9 above.
[37] See para. 48 above.
[38] See para. 65 above.

(1) Mr. John Greenwood be removed as the Liquidator of Leeward Isles Resorts Limited.

(2) Mr. Greenwood present a final report to the creditors and the High Court within 28 days of the date of this order.

(3) Mr. Marcus Wide, insolvency practitioner of Grant Thornton British Virgin Islands Limited, be appointed liquidator of LIR with effect from the date of this order with all powers and duties of a liquidator set out in the Companies Act.

(4) Mr. Wide should give notice of his appointment to all creditors within 7 days of the date of this order and convene a meeting of creditors within 35 days of the date of this order upon not less than 7 days' notice.

(5) The appellants, Mr. John Greenwood and Social Security Board shall have their assessed costs paid out of the assets of LIR.

[71] Finally, I express my immense gratitude to counsel on all sides for their thorough preparation and presentation of the written and oral submissions.

Paul Webster, QC
Justice of Appeal [Ag.]

I concur.

Mario Michel
Justice of Appeal

I concur.

Gertel Thom
Justice of Appeal