

Sanctioning ownership: the Grand Court of the Cayman Islands confirms broad scope

Insights - 05/01/2023

In the recent decision of *Re Ascentra Holdings Inc. (in Official Liquidation)*, the Grand Court of the Cayman Islands has once again confirmed the significant scope of its sanction jurisdiction under section 110(2) of the Companies Act.

Re Ascentra Holdings Inc. (in Official Liquidation) (**Ascentra**) follows the decision in *Re Polarcus Limited* [1] and a line of recent cases that illustrate the breadth of the Grand Court's sanction jurisdiction. In *Ascentra*, Justice Doyle concluded that the sanction regime allows the Court to make orders that resolve contested questions relating to the ownership of company assets without requiring the official liquidator to commence separate proceedings to determine those rights.

Facts

The joint official liquidators (**JOLs**) of Ascentra Holdings Inc. (the **Company**) sought orders and directions under section 110(2) of the Companies Act (the **Act**) to authorise their ability to treat approximately US\$11 million in funds held by a bank as an unencumbered asset of the Company (the **Funds**). A third party, Peng Gao Ke, Inc. SEZC (**SPGK**), resisted the application as, on the proper construction of a Deed of Mutual Release (the **Deed**), it argued it had a proprietary interest in the Funds.

SPGK asserted that the sanction jurisdiction was not the appropriate place to determine contested questions of beneficial ownership which would affect it as a third party to the liquidation. Instead, SPGK submitted that the JOLs' application should be dismissed and the dispute should progress as a separate inter partes proceeding involving pleadings, discovery and cross-examination.

Scope of the Cayman Islands' sanction jurisdiction

Although the Act is silent as to whether an official liquidator can make an application for directions, [2] recent decisions of the Grand Court confirm that an application for sanction orders under section 110(2) is effectively treated as an application for directions in the Cayman Islands. [3]

In the ordinary case, sanction applications are brought to provide a liquidator with sanction or directions (either permissive or prescriptive) on the manner in which they should exercise certain reserved powers. Having the sanction of the Court generally protects the liquidator from a claim for breach of duty in relation to their use of those powers. However, in determining the proper exercise of powers, the Court may need to consider questions affecting the substantive rights of third parties. In those circumstances, the Court may direct that the matter be adjudicated as an inter partes proceeding between stakeholders and give directions as to the ongoing involvement of the liquidators [4] or to be continued as a sanction application involving the liquidators but with additional directions for the exchange of evidence from those contesting the rights. [5] Dealing in this manner may be more attractive to liquidators and those interested in the liquidation estate as it can be more efficient and cost effective than requiring contested issues to be resolved outside of the liquidation proceedings.

Jurisdictional analysis

In a detailed judgment, Doyle J reviewed several authorities on the issue of whether the sanction jurisdiction permitted the Court to determine questions of beneficial ownership. His Lordship considered numerous decisions in which the Court was asked to make sanction orders that affected the rights of third parties, including:

- an application for directions as to whether a creditor was permitted to file a proof of debt [6]
- a dispute involving the determination of the correct shareholdings of the company's two shareholders [7]
- an application seeking authorisation for the liquidators to incorporate a special purpose vehicle to acquire quotas [8]

Doyle J also considered other Commonwealth authorities, including an English authority in which the English High Court held that it had the power to determine ownership of assets upon application of a liquidator outside of a proceeding commenced by writ. [9] Accordingly, Doyle J found that the Court had jurisdiction to consider the orders sought by the JOLs, subject to the Court's discretion to exercise that jurisdiction. [10]

Discretion and application

When deciding whether it was appropriate to exercise his discretion to grant the relief sought by the JOLs, Doyle J said that it was necessary to consider whether it was appropriate and fair in the circumstances of the case. His Lordship found SPGK's complaints - that it was prejudiced if discretion was exercised in the absence of pleadings, discovery, and cross-examination - "somewhat hollow" as during a two-day hearing, SPGK had made no applications for such procedural steps. Doyle J also emphasised that the orders sought involved a "short point of construction" and not the determination of the wider dispute between the Company and SPGK.

After hearing arguments from the parties on the Deed's construction, Doyle J ultimately rejected SPGK's arguments in support of its contention that it was the beneficial owner of the Funds and made the orders sought by the JOLs.

Conclusion

Ascentra is another important decision in the growing series of authorities that demonstrate the flexibility and power of the sanction jurisdiction in the Cayman Islands and can be deployed to facilitate the efficient and cost effective realisation and distribution of the liquidation estate for the benefit of all stakeholders.

[1] (Unreported, Kawaley J, 23 June 2022). For more information, read our case update: [Polarcus – a declaratory relief for Cayman Islands official liquidators](#)

[2] Compared to the position of a voluntary liquidator, who may make an application for directions under section 129 of the Act.

[3] See *Re Direct Lending Income Feeder Fund Inc.* (Unreported, Segal J, 9 May 2022) at [10]; *Re Polarcus* at [16]-[17].

[4] The Court has that power under Order 11, rule 3(3) of the Companies Winding Up Rules 2018 in respect of substantive rights "as between the company and any creditor or contributory or any class thereof".

[5] The Court may direct that the liquidator take no further part in the proceeding to avoid incurring unnecessary costs: for example see *Re Belmont Asset Based Lending Limited* [2011] (2) CILR 484; *Re Emergent Capital Limited* [2012] (1) CILR 1.

[6] *Re Belmont Asset Based Lending Limited* [2011] (2) CILR 484.

[7] *Re Emergent Capital Limited* [2012] (1) CILR 1.

[8] *Re Polarcus*.

[9] Although relevantly this was in the context of an application under section 234(2) of the Insolvency Act 1986 (UK): *Re London Iron and Steel Co Ltd* [1990] BCLC 372; *Conn v Ezair* [2019] EWHC 1722 (Ch). The equivalent provision in the Cayman Islands is section 138 of the Act.

[10] *Re Ascentra* at [75].

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under [Legal Notice](#)

Meet the Author



Gemma Bellfield (nee Lardner)

Partner

Cayman Islands

E: gemma.bellfield@ogier.com

T: [+1 345 815 1880](tel:+13458151880)

Key Contacts



Jeremy Snead

Partner

London

Cayman Islands

British Virgin Islands

E: jeremy.snead@ogier.com

T: [+44 20 3835 9470](tel:+442038359470)



Corey Byrne

Senior Associate

Cayman Islands

E: corey.byrne@ogier.com

T: [+1 345 815 1842](tel:+13458151842)

Related Services

Dispute Resolution

Legal

Related Sectors

Restructuring and Insolvency