

## Variety is the spice of life: recent litigation before the Jersey Royal Court

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The Royal Court in Jersey has a varied and challenging workload. The cases that have come before it this quarter certainly live up to that description. Here we discuss just a handful of cases that the Royal Court has determined, that, whilst in some respects are unremarkable, in other respects serve to illustrate the breadth of the experience that the Royal Court judiciary possesses.

### Representation of Private Equity Fund Finance Limited [2018] JRC 194

The Royal Court ordered the winding up of a limited partnership, in circumstances where (i) the General Partner had been struck off the Companies Register due to a failure to file its annual return; (ii) there were assets of the limited partnership including investments and bank accounts, which were, due to the dissolution of the General Partner, considered held by the Crown as bona vacantia; (iii) the Partnership Agreement did not make provision for the situation; (iv) one of the partners (the Representor) had applied to collect in and realise the assets of the limited partnership.

The Royal Court noted that the Representor had reached agreement with HM Receiver General, subject to the Royal Court's approval, for the transfer of the movable assets of the limited partnership to the Representor, subject to a fee calculated on the basis of the assets held bona vacantia, to be paid to the Receiver General.

The Royal Court held that because the Partnership Agreement was silent as to the winding up of the limited partnership in these circumstances, it was appropriate for it to provide for an orderly winding up by giving directions under its power within the Limited Partnerships (Jersey) Law 1994.

# **ROK Construction Limited v Angel Fish Limited**

## **[2018] JRC 189**

The issue before the Royal Court concerned the interpretation of a construction contract, in standard JCT form. The crux of the issue was that ROK Construction wanted to refer a dispute under the contract to arbitration, but Angel Fish maintained that the JCT contract did not allow ROK to do so without Angel Fish's express agreement, which had not been provided.

The Royal Court set out the position under Jersey law relating to interpreting contracts, which is summarised as follows:

- The aim is to establish the presumed intention of the parties from the words used;
- The words used must be construed against the background of the surrounding circumstances;
- This means the circumstances that must be taken to have been known to the parties at the time.
- These circumstances include anything that would have affected the way in which the language would have been understood by a reasonable man, except that evidence of subjective intention is ordinarily inadmissible.
- The words must be read in the context of the document as a whole, and should so far as possible be given their ordinary meaning.
- A different meaning may have to be given to them if a reading of the document as a whole and common sense so require.

The Royal Court was required to consider the terms of the JCT contract, and an Addendum which the parties had signed, amending the core contractual terms.

In considering the JCT contract and the Addendum as a whole, the Royal Court considered that it was not clear that the Addendum was intended to supersede the requirements that the parties elected arbitration. Consequently, under the terms of the contractual documentation, it was necessary for the parties clearly to elect to refer the matter to arbitration, which the Royal Court considered that they had not done, and therefore ROK's request for a declaration that the dispute be referred to arbitration was refused.

## **Smith v Nedbank [2018] JRC 156**

A letter of request seeking the recognition in Jersey of the appointment of a US-appointed trustee in Bankruptcy had been issued by the US Bankruptcy Court, Southern District of Florida, West Palm Beach Division. The Royal Court noted that it was willing to grant aid to a requesting

court on the grounds of comity between courts. Whilst the Bankruptcy (Désastre) (Jersey) Law 1990 provides that the Royal Court may assist courts from a relevant country in relation to the insolvency of an individual, the fact that the US was not a relevant country did not prevent the Royal Court from assisting: "Here we have a request from a foreign court which has assured us of reciprocity of treatment if we were to make such a request and we considered it right to give assistance in that respect."

Consequently, the letter of request was granted and given effect to in Jersey. This is unremarkable and would not normally justify the publication of a judgment. However, because one party was arguing that it was unnecessary for the appointment to be registered in the Royal Court through a letter of request, the Royal Court considered that a short judgment was appropriate.

The argument was that the trustee in bankruptcy was ultimately merely seeking Norwich Pharmacal relief. There was, it was argued, a difference between Norwich Pharmacal relief and a recognition application which might be much wider. As an office holder, the trustee should not be required to undertake an expensive and time consuming process, and should not be in an inferior position to any other sort of office holder.

The Royal Court ultimately disagreed with the arguments, and said it was right to seek recognition of the appointment as trustee in bankruptcy by providing a letter of request from the US Bankruptcy Court.

The Court said that "a trustee in bankruptcy acts in most jurisdictions to the direction of the court which appointed him or her. The trustee comes into our jurisdiction giving effect in one form or another to the orders of that court or to comply with the obligations which arise out of some foreign statute. ... As a matter of comity, before the Désastre Law, this Court would give assistance to a foreign court, ... the condition always is that the foreign court seeks our assistance, and, when it is given, that assistance is conditional upon the trustee in bankruptcy acting in our jurisdiction to our direction."

The Court acknowledged that at the heart of this process is the recognition that no foreign court should exercise jurisdiction in Jersey without the Court's consent. In cases of urgency, where there is no time to make an application to a foreign court for a letter of request, the solution is that an application be made to the Royal Court, seeking interim recognition for the purpose only of obtaining the interim order accompanied by an undertaking to apply promptly to the foreign court for a letter of request to be sent to Jersey.

## **Representation of UBM plc [2018] JRC 150**

An application was made pursuant to article 125 Companies (Jersey) Law 1991 seeking the Royal Court's sanction of a scheme of arrangement. The Royal Court had previously given directions in

relation to the application, requiring the holding of a shareholders' meeting to approve the scheme. In summary, the purpose of the scheme was to enable Informa to acquire shares in UBM plc in return for new shares in Informa and cash. It being ultimately an acquisition by Informa of UBM, it was governed by the City Code on Takeovers and Mergers, and was being implemented under the supervision of the UK Panel on Takeovers and Mergers.

The test for schemes of arrangement is threefold, requiring the Court to consider:

- Whether the provisions of the Companies (Jersey) Law 1991 had been complied with;
- Whether the class of shareholders to be affected by the proposed scheme was fairly represented by those who attended the meeting and whether the statutory majority are acting bona fide and not coercing the minority in order to promote interests adverse to those of the class whom they purport to represent;
- Whether the arrangement is such that an intelligent and honest man, a member of the class concerned and acting in respect of his interest might reasonably approve.

In this instance, the Court was satisfied that the requirements had been met on the basis of the evidence put before the Court, and therefore the scheme was sanctioned.

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