

Judgment 2/2008

**Guernsey Financial Services Commission v
(1) Claridges Trustees Limited (2) Claridges Trust
Company (Guernsey) Limited (3) First Nominees
Limited (4) Second Nominees Limited – Royal Court
(Civil Action File 1166) – 16 January 2008**

**Companies (Guernsey) Law, 1994 (s.96B) – Regulation of Fiduciaries,
Administration Businesses and Company Directors etc (Bailiwick of Guernsey)
Law, 2000 (s.34) – applications by the Commission for the four Respondent
Companies to be wound up – application granted under s.96B of the law of 1994
(See Judgment 8/2007)**

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

Civil 1166

The 16th day of January 2008 before Richard John Collas Esquire, Deputy
Bailiff, present Alan Cecil Bisson, Susan Mowbray and David Osmond le
Conte, Jurats.

GUERNSEY FINANCIAL SERVICES COMMISSION

(“the Commission”)

v

**(1) CLARIDGES TRUSTEES LIMITED
(2) CLARIDGES TRUST COMPANY (GUERNSEY)
LIMITED
(3) FIRST NOMINEES LIMITED
(4) SECOND NOMINEES LIMITED**

(the Respondents)

The Court having on the 15th of January considered an
application by the Commission to wind up the four companies comprising Claridges
and having heard thereon Advocates R J McMahon and S H Davies counsel for the
Commission and Respondents respectively this day gave judgment in the terms
attached hereto and ORDERED

1. That pursuant to section 96B of the Companies (Guernsey) Law, 1994, all
four of the said companies comprising Claridges be wound up.

2. That Richard Anthony Garrard and Nicola Ann Robinson be appointed as joint liquidators of the said companies, the said Richard Anthony Garrard and Nicola Ann Robinson being duly sworn thereto.
3. That the Respondents pay to the Commission costs on the standard recoverable basis.

S M D ROSS
Her Majesty's Deputy Greffier

IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

In the matter of an application under section 96B of the

Companies (Guernsey) Law 1994 (as amended).

**In the matter of an application under section 34 of the
Regulation of Fiduciaries, Administration Businesses
and Company Directors, etc. (Bailiwick of Guernsey)
Law 2000 (as amended).**

Between:

GUERNSEY FINANCIAL SERVICES COMMISSION

(the “Commission”)

-v-

(1) CLARIDGES TRUSTEES LIMITED

**(2) CLARIDGES TRUST COMPANY (GUERNSEY)
LIMITED**

(the “Respondents”)

(3) FIRST NOMINEES LIMITED

(4) SECOND NOMINEES LIMITED

Judgment handed down: 16th January 2008

Before: Richard John COLLAS Esq., Deputy-Bailiff

Jurats: A C Bisson, E I J S M Mowbray and D O Le Conte

Advocate for the Commission: R J McMahon
Advocate for the Respondents: S H Davies

1. We are concerned with an application by the Guernsey Financial Services Commission (“the Commission”) to wind up four companies. We refer to them collectively as “the four companies” and to the first of them as “CTL”. CTL opposes the application through Advocate Davies and is the only one of the four companies that appeared before us.
2. I have reminded the Jurats as to our respective responsibilities. I am the sole judge of law and the Jurats must accept my directions on the law. The Jurats are the sole judges of fact. They must decide what evidence they accept and what evidence they reject or are unsure about. If I appear to hold a view of the

evidence or facts with which they do not agree they must reject that view. I directed them to take account of the submissions of counsel but said they were not bound to accept their arguments. The Jurats may draw inferences of fact from the evidence they find proved, that is to say they may come to commonsense conclusions based upon the evidence but they may not speculate as to evidence that has not been adduced.

3. The burden throughout is on the Commission to satisfy the Court that its application is made out and, this being a civil court, the standard of proof is the balance of probabilities, in other words that something is more likely so than not so and if the Jurats are not so persuaded they must reject it.
4. The evidence adduced has all been produced in affidavits and the documents exhibited thereto. The Commission produced three affidavits, each sworn by Stephen Trevor who has been employed by the Commission since December 1999 and since August 2004 has held the post of Director of Fiduciary and Intelligence Services. His first affidavit was sworn on 3rd January 2008 and the other two on the 10th January. CTL has produced one affidavit, sworn by Joel Rubinovich, dated 14th January 2008. There has been no “live evidence”.
5. The application is brought first under section 96B of the Companies (Guernsey) Law 1994 as amended, a section that was inserted in the 1994 Law by The Companies (Amendment) (Guernsey) Law 1996:

“96B. (1) *A company may be wound up by the Court if the Court is of the opinion that it is desirable that the company should be wound up for the protection of the public or of the reputation of the Bailiwick of Guernsey.”*

6. The Commission seeks to persuade the Court that either one or both the grounds are made out. In the alternative, the Commission applies under section 34 of the Regulation of Fiduciaries, Administration Businesses and Company Directors etc (Bailiwick of Guernsey) Law 2000 (“the Fiduciaries Law”) on the ground that it is just and equitable the companies be wound up.
7. The Commission has the burden of satisfying the Court that the grounds, or at least one of them, are made out in respect of each of the four companies.
8. We deal first with the application under the Companies Law. I directed the Jurats that the expressions “*the protection of the public*” and “*the protection of the reputation of the Bailiwick of Guernsey*” should be given their ordinary meanings. In particular “*the public*” is very wide; it is not limited to the public of Guernsey and includes members of the public wheresoever they may be situate and may include clients of the four companies and those connected with the entities administered by them such as the beneficiaries of trusts.
9. The four companies are all Guernsey registered limited liability companies and are owned by a fifth company, Claridges Holdings Ltd. All five companies were incorporated on 21st July 2000. The latter company has

100,000 issued shares of which 33,500 are held for trust beneficiaries being Mr Rubinovich and others; 33,500 are held for trust beneficiaries being Peter Dawson-Ball and others; and two holdings each of 16,500 shares are owned by Messrs R Crawford and D Campbell respectively.

10. The four companies were carrying on business prior to 1st June 2001, the date on which the Fiduciaries Law came into force, and they applied for a full fiduciary licence under that Law on 31st May 2001. Consequently they have benefited from the transitional provisions in section 59 of the Law and had been able to carry on business performing regulated activities because they were deemed to hold a full fiduciary licence. For reasons we will explain, that deemed status came to an end on 12th January 2008.
11. The Court had the benefit of a chronology of the four companies' dealings with the Commission exhibited at pages 29 to 33 of Mr Trevor's first affidavit. The discussions between the parties have been very protracted whilst they sought to address the concerns raised by the Commission. Some of the more important events include:

19th June 2002 - on-site visit by the Commission followed by detailed correspondence over issues arising;

23rd January 2003 – detailed letter from the Commission explaining why its Assessment Committee was not prepared to use its delegated power to issue a licence. Subsequently, discussions took place during which the Commission pressed CTL for its proposals on restructuring and on how to meet the concerns expressed.

22nd June 2006 – the Commission wrote to CTL imposing conditions on the deemed licence held pursuant to section 59 of the Fiduciaries Law. The conditions included restrictions on Mr Dawson-Ball: preventing him from being a manager, director or controller of CTL; that the Directors of CTL be responsible for his activities; that no staff report to him; and that he was not to be a trustee, director or other company officer in the course of his duties to CTL. Also, CTL had three months to review its files and produce a certificate confirming *inter alia* that CTL complied with its responsibilities under the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations 2002 and the money laundering guidance notes. No new business was to be accepted without the approval of a New Business Committee which was to include directors of the company but not Mr Dawson-Ball. The business of CTL was to be managed by another full fiduciary licence holder approved for this purpose by the Commission;

4th October 2006 – the last mentioned of those conditions was satisfied when CTL entered into an agreement with The Kensington Corporation Ltd (“Kensington”) for the provision of management services;

11th April 2007 – the Commission imposed further conditions on the deemed fiduciary licence. The certificate referred to above that was to be produced within three months of the date of the letter of 22nd June had not been produced. A new condition required CTL to produce a certificate by 30th June 2007. No new client appointments were to be accepted;

2nd May 2007 – The Commission appointed PricewaterhouseCoopers (“PwC”) as Inspectors to review CTL’s controls and procedures with a limited review of files;

20th June 2007 – PwC produced a written report. PwC had been unable to meet Mr Dawson-Ball who was unavailable and off-island during the two weeks of their engagement and they did not seek to contact Mr Rubinovich. However they spoke to two of the directors of CTL appointed by Kensington and two other officers of Kensington. In summary, PwC concluded that the Commission’s concerns were well founded and that many fundamental issues prevented CTL from complying with relevant rules and regulations;

4th July 2007 – the Commission invited comments from CTL by 20th July;

26th July 2007 – not having received any comments, the Commission’s Assessment Committee met to consider the matter further and concluded that a number of aspects of the licensing criteria were not met and set out its reasons in a letter dated 30th July to CTL;

3rd October 2007 – Kensington gave three months’ notice terminating the management agreement. There followed correspondence between the Commission and Mr Rubinovich as chairman of CTL requesting CTL’s proposals for dealing with the business and finding a way forward on the expiry of the three months’ notice period;

5th December 2007 – CTL signed Heads of Agreement with Fort Management Services Ltd (“Fort”) for the transfer of its book of clients subject to due diligence procedures;

6th December 2007 – Mr Rubinovich wrote to the Commission saying he was reluctant to attend a meeting with the Commission, as requested by it, also saying CTL had agreed to the termination of its services and purporting to withdraw the application for a licence subject to repayment of licence fees which the Commission said are not repayable;

14th December 2007 – the Commission wrote to CTL advising that the licence application had been rejected because the Commission was not satisfied the licensing criteria had been fulfilled. Five of the requirements of Schedule 1 to the Fiduciaries Law were not met, including that Mr Rubinovich was not considered to be a fit and proper

person to act as a director of the group. Mr Rubinovich has subsequently lodged an appeal against the decision in respect of him, but even if the appeal were to succeed, the licence application would not be granted as all the licensing criteria must be satisfied. The four companies have not appealed the decision to refuse them a full fiduciary licence, so their deemed status as the holder of a fiduciary licence lapsed on 12th January 2008;

19th December 2007 – Mr Rubinovich wrote as chairman of CTL to say that Kensington would be asked to continue as managers pending the carrying out of due diligence on behalf of Fort and the transfer of files to it;

21st December 2007 – Kensington advised Mr Trevor it was not willing to continue as manager;

2nd January 2008 – Mr Rubinovich resigned as director of CTL and the other companies in the group and 1 hour 47 minutes later rescinded his resignation;

3rd January 2008 – the management agreement with Kensington came to an end; all directors except Mr Rubinovich resigned from CTL. The Commission applied for, and was granted, an order under section 33 of the Fiduciaries Law restraining the four companies, Mr Rubinovich and Mr Dawson-Ball from carrying on regulated activities. The order has since been renewed and remains in force.

12. The present position is that CTL is no longer licensed. It has a sole director, Mr Rubinovich, who is not resident in the jurisdiction. The only other employee is apparently Mr Dawson-Ball, if he remains an employee. If he is, there is no one locally who can supervise his activities. The four companies have some 30 trusts and 100 companies under management. There is no one who can lawfully discharge the duties of managing those trusts and companies. We are not told the value of assets currently under administration but in its revised application for a full fiduciary licence submitted on 11th April 2006 Mr Dawson-Ball, who was then a director, stated on behalf of CTL as lead applicant that the four companies between them administered 115 companies and 44 trusts and had £68,000,000 of assets under administration.
13. The Fiduciaries Law prohibits Guernsey registered companies from carrying on activities proscribed by the Law, except under, and in accordance with, a fiduciary licence. It is reasonable to conclude that the States approved the Law in order to protect the public from service providers who do not meet the minimum licensing criteria and in order to maintain or promote Guernsey's reputation as a well regulated and respectable financial centre. The four companies are now unlicensed. They, or those of them that provide administration and trusteeship services to clients, need to be administered lawfully and in a manner that will enable the client relationships to be transferred to another licensed service provider or otherwise unwound. The Commission have concluded that the best way to achieve that aim is through a

winding up and that conclusion is not challenged. Consequently, the Jurats are satisfied that it is desirable that three of the four companies be wound up. Those are the three that do not oppose this application and which Mr Rubinovich has deposed are providing services to clients, namely Claridges Trust Company (Guernsey) Ltd, First Nominees Ltd and Second Nominees Ltd.

14. The Court must decide whether CTL should also be wound up. Advocate McMahon argued, on behalf of the Commission, that the affairs of the four companies are so inextricably interwoven that it would not be practicable to extract CTL and allow it be administered separately from the liquidation of the other three.
15. That is in response to CTL's proposal that only the other three companies be wound up. In his affidavit, Mr Rubinovich deposed that CTL's role is now reduced to collecting fees from clients on behalf of the other three companies and paying expenses including staff costs on their behalf. Historically CTL provided marketing services to the group but that has apparently ceased, presumably because of the restriction imposed by the Commission preventing the acceptance of new business. He said that until a year ago CTL acted as company secretary to a number of clients but that role was transferred to two of the other companies about a year ago. He said all client services are now provided through the other three companies, one of which holds client assets. He added that "*CTL has no business that is not related to the provision of services to [the other three companies]*". He said the reason for that division of responsibility was to ensure "*clear division between the assets of the underlying clients and those of CTL.*" So, he argues, the clients of the four companies will be protected when the three companies named above are placed in liquidation. Mr Rubinovich says he is concerned the fees and expenses of the liquidators will reduce CTL's ability to pay its creditors and provide a return to shareholders, especially as the liquidation is likely to take two to three years because of the arrangements agreed with Fort whereby the purchase price for the business will be payable over several years. The largest creditors of CTL are Mr Rubinovich and Mr Dawson-Ball who are owed a total of approximately £190,000 so they stand to lose the most if creditors are not paid in full. An unaudited balance sheet as at 31st December 2007 shows assets in excess of current liabilities to the tune of £170,000 largely due to accounts receivable of about £193,000. Advocate Davies was unable to say in what capacity CTL is entitled to collect fee income from clients on behalf of the other three companies.
16. The documents exhibited to the Court suggest that the entitlement to receive fee income has changed over the years. The audited accounts for 2005 show that CTL received fee income of £494,282; and £425,271 in the previous year. A note to the accounts declares that "*Fee income is the amount derived from the provision of services falling within the company's ordinary activities.*" The Report of the Directors declares that the principal activity of CTL is that of fiduciaries. That Report is dated 21st June 2006. Another note declares that "*the assets and liabilities of entities administered by the company are not*

incorporated into these financial statements” suggesting that CTL did in 2005 administer other entities.

17. CTL’s revised application for a fiduciary licence dated 11th April 2006 states that CTL had a turnover of £526,248 paid to Claridges Holdings and that the other three companies had no turnover.
18. The Heads of Agreement between Fort and CTL dated 5th December 2007 refers to CTL’s “*book of clients*”; to “*CTL book of client business*”; and, in several places to “*its clients*”. It does not mention that any client relationships are held by the other three companies.
19. Advocate McMahon pointed out that CTL was the lead applicant in the application for a fiduciary licence and that correspondence in connection with it was conducted by Mr Rubinovich as chairman of CTL. Furthermore he drew attention to paragraph 11 of Mr Rubinovich’s affidavit in which he said CTL has no business that is not related to the provision of services to the other three companies.
20. The decision of the Jurats in the light of all the evidence is that the affairs of CTL are inextricably interwoven with the affairs of the other three companies. Mr Rubinovich suggests that CTL’s role has changed to the extent that it now has no client relationships. Having looked at all the documents, and in particular the Heads of Agreement with Fort, the Jurats are not persuaded that the relationships have changed to the extent claimed by Mr Rubinovich. Even if they had changed to the extent he claims, the Jurats are persuaded it would be desirable that all four companies be wound up together.
21. The Court accepts that compulsory liquidation is a draconian remedy which is to be used only as a last resort. The long history of the Commission’s dealings with the four companies shows the steps it has taken and the lengths it has gone to in striving to find a solution to address the concerns raised. Their decision to reject the licence application was not taken hastily and indeed it has not been appealed. The Court considers the protection of the public and the reputation of the Bailiwick of Guernsey are of such high importance as to justify the imposition of this draconian remedy. The Court shares Mr Rubinovich’s concerns that the cost of the liquidation may be considerable and it urges the liquidators to do all they can to keep the costs reasonable.
22. Having reached that conclusion it is not strictly necessary to comment on the undertakings offered by Mr Rubinovich, but as they were in issue the Court has given them consideration. Mr Trevor deposed in his third affidavit that as a result of the Commission’s dealings with Mr Rubinovich since 2001 it does not consider it can rely upon the accuracy of the statements he makes. He referred to two specific instances where Mr Rubinovich made assertions that turned out to be factually incorrect. In reply, Mr Rubinovich does not deny that the first of the statements was inaccurate. The second related to a complaint which he said had been withdrawn. He argued that neither was sufficiently serious to justify the assertion that his credibility is in issue.

23. Without forming a view on those two specific instances, the Jurats have considered the undertakings in the context of the lengthy and protracted dealings between Mr Rubinovich and the Commission. They have concluded that the cumulative picture painted by those dealings is such that no confidence could be placed in those undertakings.
24. Finally we deal with the application made by the Commission in the alternative under the Fiduciaries Law on the ground that a winding-up is “*just and equitable*”.
25. We have not been referred to any specific authorities as to the meaning of “*just and equitable*” nor the circumstances where a court has considered a winding-up on such grounds to be justified. Advocate McMahon submitted that the Commission’s role operates in the round for the benefit of everyone involved in the company including its shareholders. He said the members of the company have the ability to pursue a just and equitable winding-up in their own right and the legislature has enabled the Commission to make an application on behalf of the members on that ground where it is most desirable for them. He argued the Court should focus on whether that is the right thing to do and submitted it would be for the benefit of the members of CTL to place the company into liquidation. Advocate Davies did not make any legal submissions on the meaning of “*just and equitable*”. I directed the Jurats to accept the law as submitted by Advocate McMahon. In the light of the Jurats’ decision on the application under the Companies law I did not consider it was necessary to direct them further although if that finding had been different I might have invited counsel to make further submissions.
26. The Court has heard from one beneficial owner of shares in the company, namely Mr Rubinovich. He opposed the winding-up of CTL. The Court has not heard from any other members. The Jurats consider that if the test as to what is “*just and equitable*” is as narrow as Advocate McMahon submitted and if they had not found it was desirable to wind up the companies in order to protect the public and the reputation of the Bailiwick, then they have not heard sufficient evidence to persuade them to order that the four companies be wound up on the “*just and equitable*” ground.