



**In the matter of Huelin-Renouf Shipping (Guernsey) Limited
(in Liquidation)**
Royal Court
4th September, 2015

**JUDGMENT
46/2015**

Application by the Joint Liquidators in respect of a proposal to transfer the assets and liabilities arising from the liquidation into the insolvent estate of another related company.

**Approved Text
04.09.2015**

**IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)**

**IN THE MATTER OF HUELIN-RENOUF SHIPPING (GUERNSEY) LIMITED
(IN LIQUIDATION)**

AND

**IN THE MATTER OF THE COMPANIES (GUERNSEY) LAW, 2008
(AS AMENDED)**

Hearing date: 24th August 2015

Reasons handed down: 4th September 2015

Before: Richard James McMahon, Esq., Deputy Bailiff

Advocate for the Applicant: Advocate M C Newman

Cases & legislation referred to:

The Companies (Guernsey) Law, 2008

In the matter of Amazing Global Technologies Limited (unreported, 11 June 2012)

The Insolvency Act 1986

McPherson's Law of Company Liquidations, 3rd ed. (2013)

Re Capital Project Homes Pty Ltd (1991) 6 ACSR 310.

Flightlease Holdings (Guernsey) Ltd v Flightlease (Ireland) Ltd [2009-10] GLR 38

Re Corebits Services Limited (in liquidation) and Zoombits Limited (in liquidation) [2011] JRC 166

Dessain and Wilkins, *Insolvency and Asset Tracking*, 3rd ed. (2005)

Re Royco Investment Company Limited [1994] JLR 236

The Companies (Jersey) Law 1991

Goode, *Principles of Corporate Insolvency Law*, 4th ed. (2011)

Re Bank of Credit and Commerce International SA (No 3) [1993] BCLC 106, [1993] BCLC 1490

Introduction

1. On 21 August 2013, Huelin-Renouf Shipping (Guernsey) Limited (“the Guernsey company”) was made the subject of a compulsory winding-up order pursuant to Part XXIII of the Companies (Guernsey) Law, 2008. Three Joint Liquidators, Alan Roberts, Jamie Toynton and Benjamin Rhodes, all of Grant Thornton Limited, were appointed. The Royal Court of Jersey had on 20 August 2013 ordered that Huelin-Renouf Shipping Limited (“the Jersey company”) be wound up on the grounds that it was just and equitable to do so. The Joint Liquidators appointed in respect of the Jersey company were also Messrs Roberts, Toynton and Rhodes. In making their orders a little over two years ago, both Courts fully appreciated from the evidence presented to them that these two companies' affairs were interwoven.
2. By an Application dated 24 June 2015, the three Joint Liquidators sought directions from this Court in respect of a proposal they have made to transfer the assets and liabilities arising from the liquidation they have been conducting in Guernsey in respect of Huelin-Renouf Shipping (Guernsey) Limited into the insolvent estate of Huelin-Renouf Shipping Limited. In this manner, the assets and liabilities of the two companies can be consolidated and appropriate payments made from the pooled assets to the creditors of the companies. It was acknowledged by the Joint Liquidators that this was only the first step in the process because sanction would also need to be sought from the Royal Court of Jersey. Their Representation for such relief stands adjourned to 8 September 2015. If the Jersey Court declines to grant the relief sought, the Joint Liquidators will have incurred the expense of making this Application and will be unable to recover anything more than they otherwise would from the insolvent estate of Huelin-Renouf Shipping (Guernsey) Limited. However, if the Jersey Court grants their relief, they will be paid for all the work they have undertaken, all preferential creditors will be paid in full, the unsecured creditors of the Guernsey company should receive a small dividend where otherwise they are unlikely to receive anything and the unsecured creditors of the Jersey company should receive a slightly larger dividend than what the Joint Liquidators expect to be able to pay if that liquidation proceeds without pooling.
3. At the conclusion of the hearing on 24 August 2015, upon the Joint Liquidators undertaking to deal with the creditors of Huelin-Renouf Shipping (Guernsey) Limited in accordance with the laws of Guernsey, I granted the Application. In doing so, I outlined briefly the reasoning I had applied. I indicated that I would set out in more detail written reasons and would endeavour to do so before the adjourned hearing before the Royal Court of Jersey. This judgment contains those reasons.

Background

4. The Application was supported by an Affidavit sworn by Mr Roberts on 26 June 2015, which had been supplemented by a short Affidavit sworn by Marie Skelly on 17 August 2015, which corrected a couple of slips in Mr Roberts' Affidavit and provided an update as to how the Jersey Representation was being progressed. The evidence adduced builds on the evidence that had been tendered in support of the application to place Huelin-Renouf Shipping (Guernsey) Limited into compulsory liquidation, which was contained in an Affidavit of Richard Evans sworn on 21 August 2013.
5. The Joint Liquidators' work to date has demonstrated that the history and affairs of both the companies have been completely intertwined to the extent that the Guernsey company had to be wound up once the Jersey company was placed into liquidation. The Jersey company had been incorporated as long ago as 1935, whereas the Guernsey company is a more recent addition to what became a group of Huelin-Renouf companies in 2001. The split of the assets that have been collected and realised within the liquidations to date shows that 78% of the total assets were found in the Jersey company and 22% in the Guernsey company. Both companies had been managed by a single management team. Following the resignation of the only Guernsey-resident director, which occurred approximately six months before the liquidations commenced, the Guernsey company has had no resident director. The business and operational decisions for both companies were made wherever the directors happened to be, and this was usually in Jersey. Invoices were issued in the name of the Jersey company,

albeit that income received was attributed to the Guernsey company if the invoice had been sent to a customer with a Guernsey address. The Jersey company handled sales and enquiries for both companies, collected debts, produced the employee payroll, authorised the repair and/or maintenance of all vehicles and equipment and provided general accounting and administrative services across the group of companies. Both companies had their own ledger and separate bank accounts. The account for the Guernsey company, though, was maintained at just £100. When the balance rose above this amount, the surplus was transferred to the Jersey company's account. Conversely, when the balance fell below £100, the Jersey company transferred funds to the Guernsey company. In simple terms, the Guernsey company was dependent on the Jersey company for its ongoing funding with the consequence that, once the Jersey company entered liquidation, there was no prospect for the Guernsey company to survive.

6. Separate fixed asset registers were maintained for each company. Although featuring on the register of the Jersey company, the costs associated with the use of those assets, where this was regarded as also being for the benefit of the Guernsey company, were split between the two companies by a factor of 3:1 in favour of the Jersey company. This approach was replicated in respect of other expenses. When it came to branding, both companies portrayed themselves as if a single Channel Islands entity. In general, customers simply thought they were dealing with Huelin-Renouf.
7. As a result of the enquiries undertaken by the Joint Liquidators, Mr Roberts has explained that they are satisfied that the companies did not operate as the two distinct companies in the manner that the law recognises flowing from their incorporation in separate jurisdictions; instead those responsible for the companies chose to promote the appearance of them being one single entity. Suppliers, creditors, customers and the general public appear to the Joint Liquidators to have predominantly believed that both companies operated as if the group were one and there has been little evidence of them being aware of which legal or geographical entity they actually contracted or dealt with.
8. Mr Roberts further explains the thinking behind the Joint Liquidators' proposal. If the pooling were permitted, the Joint Liquidators would still need to satisfy themselves of the claims of creditors before making any distribution, however, there would be no need for the Joint Liquidators to go through the further step of attempting to unravel the transactions of the two companies to ensure that the person concerned was a creditor of Huelin-Renouf Shipping (Guernsey) Limited and not Huelin-Renouf Shipping Limited (and vice versa). To do this would involve them reviewing the way in which expenses have been attributed to the two companies historically so as to ensure that what was done was justifiable and had been recorded accurately. The Joint Liquidators have estimated that as much as £130,000 of additional expenditure, including legal fees and valuation fees, could be incurred if they had to undertake this work before concluding both liquidations. However, if the assets and liabilities of both companies were to be pooled in the Jersey liquidation, with distributions made to those who are shown to be subject to Guernsey's regime for preferred creditors being dealt with under Guernsey law principles, those shown to be subject to the Jersey regime being dealt with under that regime and all unsecured creditors falling into the group of creditors to whom the remaining portion of the pooled estate would be distributed, monies that would otherwise be expended by the Joint Liquidators undertaking this exercise would be saved and available for distribution. This would be a benefit to everyone concerned.
9. The Joint Liquidators have prepared a draft Estimated Outcome Statement showing the comparisons between the pooled and unpooled scenarios. The assets realised thus far are £1,904,629.54 in respect of the Jersey company and £109,421.08 in respect of the Guernsey company. The expenses incurred by the Joint Liquidators and other payments made to date in respect of the Guernsey liquidation have already exceeded the amount realised in respect of the Guernsey company by a little under £10,000. The liquidation expenses and payments made in respect of the Jersey company are a little under £850,000. The preferential creditors of the Guernsey company have debts put at £44,166.25. Without pooling the assets of the two companies, it is clear that these preferential creditors of the Guernsey company are unlikely to

receive anything. The same position arises for the unsecured creditors of the Guernsey company, whose debts total £372,353.10. If the assets and liabilities of the two companies are pooled, as the Joint Liquidators propose, the preferential creditors of the Jersey company, whose debts total £155,476.50, would still be paid in full and the unsecured creditors of both companies might expect a dividend of approximately 7.8 pence in the pound. If there is to be no pooling, with the additional expenses estimated by the Joint Liquidators, those unsecured creditors of the Jersey company might well get a lower dividend of approximately 7.12 pence in the pound. According to the Joint Liquidators, the pooling proposal results in no one being worse off and the majority of those involved actually being better off.

10. In summary, therefore, the Joint Liquidators have concluded that effecting the proposed transfer to the liquidation of the Jersey company of the assets and liabilities of the Guernsey company is the most cost-effective, efficient and fair way to proceed. They duly wrote to both companies' creditors and members on 27 January 2015 setting out their reasoning for reaching this conclusion. They invited any creditor who wished to make any representation about their proposal, including being heard when the Application was eventually presented to the Court, to contact them. No one has opposed the proposal. No one indicated any wish to attend at the eventual hearing of the Application and no one actually attended the hearing to voice any concerns. The principal shareholder of Huelin-Renouf Shipping Limited gave his support to the proposed transfer and pooling at a meeting on 20 February 2015.

Jurisdiction

11. The first issue I needed to resolve was whether the Court has jurisdiction to entertain an Application of this nature. Advocate Newman, who appeared on behalf of the Joint Liquidators, referred to sections 413(4)(e) and 426 of the 2008 Law. I am satisfied that section 426 is the provision by which a liquidator can make an Application of this nature. Section 426 provides:

"The liquidator of a company may seek the Court's directions in relation to any matter arising in relation to the winding up of the company and upon such an application the Court may make such order as it thinks fit."

I considered the ambit of this provision in *In the matter of Amazing Global Technologies Limited* (unreported, 11 June 2012). I remain satisfied that the wording is potentially broad and that it enables a liquidator to seek directions from the Court during the course of a liquidation to assist him or her in conducting the liquidation. This is apparent from the passage referring to section 168(3) of the Insolvency Act 1986 that I cited from *McPherson's Law of Company Liquidations*, now in its 3rd ed., at para. 9-046:

"The role of the section is to provide a procedure for a liquidator to obtain some guidance from the court in conducting a liquidation and so as to give protection against a claim for breach of duty. The provision is essentially concerned with action which is future at the time of the application being heard and provides an administrative non-adversary proceeding. This course is so frequently taken that little purpose would be served by attempting a catalogue of all the situations in which such an application may be made. Some examples which may be mentioned are where the liquidator wishes: to know whether to postpone the sale of certain assets; whether testamentary gifts to a charitable company that had gone into liquidation were ineffective; how to deal with a claim of a creditor; to institute proceedings for misfeasance; to admit a particular debt or claim to proof in the winding up; to make payments out of the assets; to levy calls on contributories; to seek guidance on how to deal with the affairs of two related companies whose affairs are intermingled; to obtain guidance on questions of law; to seek guidance on the sale of a cause of action; to know how litigation should be conducted; and to seek resolution of issues of legal procedure. Although a direction given on such an application does not amount to a judicial determination raising an estoppel, the advantage of using this procedure is that, having obtained and followed the advice of the court with respect

to a particular matter, the liquidator is then protected against any possible allegations of breach of duty which might subsequently be made against him or her by creditors or contributories of the company on the basis that the proceedings were not properly incurred. In fact the courts have said that in cases of real doubt the correct procedure for a liquidator is to seek directions."

Advocate Newman has highlighted the reference to seeking guidance on how to deal with the affairs of two related companies whose affairs are intermingled. The case from which that reference is drawn is *Re Capital Project Homes Pty Ltd* (1991) 6 ACSR 310.

12. I was not persuaded that section 413(4)(e) of the 2008 Law provided any basis for the making of an application of this nature because it simply provides that "A liquidator appointed by the Court shall be sworn and has power ... to do any act authorised by the Court." I therefore regard this provision as requiring some other basis for the Court making an order rather than offering any basis itself for the making of an application to the Court. It confirms that once the Court has given authorisation for the liquidator to act in a particular way, quite possibly by seeking directions under section 426, the liquidator is thereafter empowered to act in the manner authorised by the Court.

Possible bars to relief

13. Having concluded that the Application could be brought pursuant to section 426, I considered that the next stage should be to have regard to the statutory framework for liquidations in Guernsey to see if anything prevented the Court granting the order sought by the Joint Liquidators. I did so because, had the legislature expressed itself in such a way that what was being proposed is not permitted, that would, in my judgment, have been conclusive and led to the dismissal of the Application. In those circumstances, it would not have mattered if what was being proposed was available in English insolvency law. This outcome is apparent from the passage from the judgment of Lieutenant-Bailiff Southwell QC in *Flightlease Holdings (Guernsey) Ltd v Flightlease (Ireland) Ltd* [2009-10] GLR 38 (at para. 91):

- "(1) *the concept of a limited company was imported into Guernsey law from English law;*
- (2) *since its importation into Guernsey law in the 1880s, it has naturally been appropriate to look to English law to help in the solution of problems concerning companies which are not covered by Guernsey statutes or customary law; ...*
- (7) *Guernsey, as a significant centre for financial services of many kinds, needs to develop its commercial laws in ways which provide just solutions in the relatively complex situations which arise, for example, in liquidations of commercial companies."*

In my view, although the company in liquidation in the present case did not operate within the financial services sector, the guidance offered here is of general application. The starting point must always be for the Court to give effect to the statutory regime applying to Guernsey companies. Where there are gaps that potentially can be filled by looking to English law developments, it is appropriate to do so. Because cross-jurisdictional issues in corporate insolvency are likely to become more commonplace rather than less so, in the absence of any constraints placed on considerations of this type in our domestic legislation, the Court should, therefore, be prepared to adapt its approach by reference to practices operating elsewhere, particularly in England and Wales where the solution produced will be a just one.

14. Having reviewed the provisions in the 2008 Law, I was satisfied that none of them operates to prevent the Joint Liquidators' proposals being approved. I paid particular attention, however, to section 419:

- "(1) *Subject to the provisions of –*
 - (a) *this Law and any rule of law as to preferential payments,*

- (b) *any agreement between the company and any creditor thereof as to the subordination of the debts due to that creditor to the debts due to the company's other creditors, and*
- (c) *any agreement between the company and any creditor thereof as to set-off,*

the company's assets in a winding up shall be realised and shall be applied in satisfaction of the company's debts and liabilities pari passu.

(2) *Any surplus shall thereafter be distributed (unless the memorandum or articles provide otherwise) among the members according to their respective rights and interests in the company."*

15. At first blush, it looks as though the Joint Liquidators' proposal does not involve any distribution of the assets they have realised in respect of Huelin-Renouf Shipping (Guernsey) Limited to the creditors of that company. Instead, the proposal is to transfer the assets to the insolvent estate of Huelin-Renouf Shipping Limited. However, the Joint Liquidators have offered an undertaking to this Court that, in their capacities as the Joint Liquidators of the Jersey company, they will make distributions to creditors of the Guernsey company as if they were doing this under Guernsey law. Preferential creditors will be paid in priority and unsecured creditors will then get distributions on a *pari passu* basis. Accordingly, I am persuaded that the proposal does not offend against the requirements of section 419.

16. I have also considered section 417(1) of the 2008 Law:

"In a compulsory winding up, when the liquidator has realised the company's assets he shall apply to the Court for the appointment of a Commissioner of the Court to examine his accounts and to distribute the funds derived from the company's assets."

As Mr Roberts has explained, the Joint Liquidators will still comply with section 417 at the conclusion of the liquidation process. The Application really seeks permission to dispense with this step now, being the stage where the Guernsey company's assets have been realised, and to defer it until after the liquidation of the Jersey company is complete. In the meantime, the effect of the proposal would be to render the Guernsey company a shell, but it would also mean that the creditors of the company would no longer be looking to the Joint Liquidators appointed by this Court to make distributions, but would turn instead to the same gentlemen in their Jersey offices for this purpose. As such, no creditor should be placed at a disadvantage and, although there would be no oversight of a creditors' meeting by a Commissioner appointed by this Court, if the Royal Court of Jersey sanctions the pooling proposal, there would be oversight by another Court. In those circumstances, I do not regard the proposal as offending against section 417.

Principle of pooling

18. Having concluded that there is no bar in the legislative framework to granting the Application, I proceeded to consider whether or not what was proposed is something that could sensibly be sanctioned. In terms of whether a pooling of assets and liabilities is in itself permissible, Advocate Newman referred to the decision of the Royal Court of Jersey in *Re Corebits Services Limited (in liquidation) and Zoombits Limited (in liquidation)* [2011] JRC 166. This case concerned two Jersey companies, which were in common ownership. The position of the liquidators (one of whom is one of the Joint Liquidators in the present case) was that the affairs of the two companies were seriously co-mingled and that it would cost a material amount to disentangle the position. The Court had regard to what was described in *Insolvency and Asset Tracking* by Dessain and Wilkins, 3rd ed.:

"The Royal Court has authorised a "pooling" (general consolidation) in connected insolvencies where this has been demonstrated to be in the best interests of creditors (such as where there has been an inextricable intermingling of funds).

Accordingly, where it is impossible, impracticable and distortion steely expensive to identify individual rights the pooling of assets and/or liabilities represents a practical solution warranted on just and equitable grounds."

Reference was also made to what had been said in Re Royco Investment Company Limited [1994] JLR 236 by Bailhache, DB:

"In any désastre, it is the interests of the creditors which must be borne primarily in mind. There is no sense in employing funds which would otherwise be paid to the creditors in pursuing lines of enquiry with only a remote prospect of recovering further assets. This is particularly important, in our judgment, where the affairs of the debtor company are inextricably intermingled with other entities, the affairs of which are being administered in another jurisdiction. Furthermore, we have been invited, quite rightly, to have regard to the principles of comity. The High Court in England has reached the conclusion that the compromise put forward was in the best interests of the general body of creditors not only of Royco Jersey, but of the other associated companies. We can see no good reason for reaching a different conclusion. Like Millett, J. we were entirely satisfied that the scheme of distribution proposed was the fairest both to the creditors and to the investors."

19. Although the Court relied on Article 186A of the Companies (Jersey) Law 1991, as amended, which enabled it to make any order in a creditors' winding up which it could have made in relation to a désastre, I am satisfied that the principle accepted as applicable relating to pooling as between two Jersey companies would be applicable as a matter of Guernsey law when considering a liquidation, just as it would in the case of désastre proceedings. The potential breadth of the Flightlease principle referred to above assist. Whereas this Court might look more towards England and Wales on insolvency, when it comes to customary law procedures, such as désastre, it clearly makes sense to look to Jersey law instead. I regarded the approach taken in Jersey as significant because I would not have been minded to grant the Joint Liquidators' Application in circumstances where I did not consider that I could grant the type of relief sought had it been an application in respect of two Guernsey companies. To my mind, it would produce an unacceptable anomaly if this Court made an order in respect of the pooling of assets and/liabilities of a Guernsey company and a non-Guernsey company where such an order could not be made as a matter of pure domestic law where two Guernsey companies were involved. Accordingly, if I had reached the conclusion that a similar approach to that taken in the Corebits case could not be taken in respect of two Guernsey companies, I would have dismissed the Application. However, because there is nothing in the 2008 Law preventing the Joint Liquidators from seeking directions from the Court for a pooling in respect of two Guernsey companies, and section 419 can, in my opinion, be read in the plural rather than being confined only to the singular used, I am satisfied that the Court, using the Flightlease guidance to which I have referred, would consider that, in appropriate cases, such orders are in principle available.
20. The position in England and Wales is helpfully summarised in Goode's *Principles of Corporate Insolvency Law*, 4th ed. (2011) (at para. 1-28):

"The subject of insolvency proceedings has always been, and continues to be, the particular corporate entity that has become insolvent, and this focus is accentuated by the reluctance of English law to pierce the corporate veil. What insolvency law here and overseas has so far singularly failed to accommodate is the management of enterprise groups where one or more, or possibly all, members of the group have become insolvent. Whereas the preparation and filing of group accounts has long been required, when it comes to insolvency the distinct legal personality of each individual company within the group is respected, with separate proceedings for each company, yet the insolvency of one member of a group may threaten the viability of previously solvent members and where the group activity is integrated a co-ordination of the management of the group as a whole may be highly desirable. ... Much attention has been devoted in recent years to ways in which it might be possible

to treat a group as a single economic enterprise for insolvency purposes. This is not easy to achieve even for procedural consolidation, which would treat the member of the group as one for the purpose of administration, whilst keeping the assets and liabilities separate. It is harder still, in policy terms, to effect substantive consolidation, involving the pooling of assets and liabilities, for this interferes with the existing rights of creditors, in particular creditors of a group member having substantial assets who can legitimately argue that they dealt with that member and should not have their position impaired by consolidation of assets and liabilities with less well-placed members of the group. In principle, a parent company is not liable for the debts of its subsidiary. If it is only infrequently that English courts will be willing to pierce the corporate veil, it is rarer still to consolidate assets and liabilities; indeed, the only case where this is likely to happen is where the assets and liabilities of the different companies within the group are so intermingled that it is impracticable to separate them."

21. The example given for the final statement in that passage is *Re Bank of Credit and Commerce International SA (No 3)* [1993] BCLC 1490. (This case was also referred to in the *Corebits* judgment.) One of the proposals of the liquidators for which the High Court's sanction was sought was a pooling agreement relating to the assets of BCCI and another company. The pooling agreement was subject to approval by the courts in Luxembourg, the Cayman Islands and England. The other company involved was Bank of Credit and Commercial International (Overseas) Limited, a company incorporated in the Cayman Islands. The application came before Sir Donald Nicholls V-C on 12 June 1992 and approval was given. The approval of the Cayman Islands court was given, on an unopposed application, on 19 June 1992. The Vice-Chancellor's decision was upheld by the Court of Appeal on 17 July 1992. Dillon LJ agreed with the Vice-Chancellor's conclusion ([1993] BCLC 106, 111):

"I am in no doubt that the agreements are so plainly for the benefit of the creditors that I should approve them without further ado. I am satisfied that the affairs of BCCI SA and BCCI Overseas are so hopelessly intertwined that a pooling of their assets, with a distribution enabling the like dividend to be paid to both companies' creditors, is the only sensible way to proceed. It would make no sense to spend vast sums of money and much time in trying to disentangle and unravel."

Discussion

22. I approached the Application in a similar vein to the way comparable applications have been dealt with elsewhere. From the material placed before the Court in Mr Roberts' Affidavit, I can echo the conclusions of the Vice-Chancellor in the *BCCI* case. When one remembers that the purpose of a liquidation such as the present one is to realise a company's assets for the benefit of creditors, it is plain that the proposed pooling arrangement is the only way in which the creditors of the Guernsey company are likely to receive anything. The costs already incurred in the liquidation of the Guernsey company will in all likelihood exhaust the assets realised. At the very best, assuming that not all of the liquidation expenses mentioned were to be allowed, there would be a small amount available to pay something, but not, it seems, everything, owed to the preferred creditors. As a consequence, those entitled to preferential payments already appear to be in the position where they will receive no distribution at all or only a very small dividend. That would, in my view, be a dire outcome. Accordingly, if there is a way in which those creditors receive more than they otherwise would, commonsense dictates that such a solution should find favour with the Court. Following the hearing, I was informed that there are 25 preferred creditors. This figure includes 22 employees. Whilst some of what they claim falls to be dealt with as unsecured creditors, a portion of their claims forms an element of the amount identified as being preferential claims. I am particularly conscious that these employees have been placed in a difficult position. The liquidation of the Guernsey company followed the placing of the Jersey company into liquidation. But for that fact, the employment of these people may have continued and they would not be looking to recover amounts due to them in the liquidation process. Moreover, because of the extremely close connection between the Jersey and Guernsey companies, if there is a solution that

enables them to be paid something, the injustice of declining to sanction the Joint Liquidators' proposal becomes self-evident.

23. From the evidence adduced, I am satisfied that the affairs of the two companies are so intermingled that it is appropriate to consider treating them almost as if they were one. The Joint Liquidators have further satisfied me that the position of the creditors of the Guernsey company is that they would probably receive nothing if the liquidation continued solely in respect of that company and without the pooling of assets and liabilities proposed. The choice for this Court between approving the pooling and authorising the proposal to consolidate the two estates is, therefore, an obvious and straightforward one. As far as I can see, the justice of the proposal as it affects the creditors of the Guernsey company is so clear (and arguably clearer than the position for the Jersey company because of the vastly improved prospects of receiving something meaningful) that the merits lie squarely in favour of granting the Application. Because I recognise the importance of having the best interests of the creditors in mind, once I satisfied myself that there was no bar to entertaining the Application, I would only have been tempted to refuse the Application had I felt that the possible benefits were illusory. However, for the reasons I have given, I fully accept that there would be no point in these Joint Liquidators expending more money investigating matters before making an application for the appointment of a Commissioner under section 417 of the 2008 Law. The proposed pooling arrangement potentially has a benefit for the creditors of the Jersey company in that similar unnecessary expenditure in that liquidation can be avoided. On principles of comity, because of this potential benefit in the Jersey liquidation it is in my view appropriate to facilitate that outcome by granting the present Application. If the Royal Court of Jersey disagrees with this assessment and dismisses the Joint Liquidators' Representation, the creditors of the Guernsey company, whose best interests I have at the forefront of my considerations, will probably not be prejudiced because the additional costs incurred by the Joint Liquidators in making this Application will not affect the amount of any distribution if that is already nothing. There is no reason to refuse the Application and every reason to grant it.

Conclusion

24. For the reasons I outlined on the day and have fleshed out in this judgment, I decided that it was fair and just to make an order authorising and sanctioning the Consolidation, as defined in the Application, to be effected by way of the Transfer, as also defined in the Application, subject to the Joint Liquidators also obtaining the sanction of the Royal Court of Jersey.
25. Although the Application sought an order that the costs of the Application rank as a liability of Huelin-Renouf Shipping (Guernsey) Limited and this be subject to the Consolidation and Transfer, I preferred the alternative basis of awarding costs, namely that they be treated as a cost in the liquidation of the Guernsey company. In my opinion, such an order recognises that the Royal Court of Jersey might dismiss the Joint Liquidators' Representation. If so, the position of the Joint Liquidators in the Guernsey company's liquidation remains unaffected. It was, in my view, entirely appropriate for the Joint Liquidators to utilise section 426 of the 2008 Law to seek directions from the Court. The usual order would be that the costs so incurred fall into the liquidation being conducted by the liquidators. If there is a pooling of assets and liabilities of both companies by the Transfer being effected, the liquidation expenses of the Joint Liquidators will be dealt with in that process. Thereafter, they will return to this Court pursuant to section 417 of the 2008 to formalise the conclusion of the liquidation of Huelin-Renouf Shipping (Guernsey) Limited.