



In the Matter of Jubilee General (Longport)
Royal Court
18th August 2017

JUDGMENT
36/2017

Ex Parte application for directions by the liquidators of two limited partnerships, under section 379(3) of the Company Law, seeking direction from the Court concerning the power to sell, lease or otherwise deal with the beneficial interest and legal title to the assets of a dissolved limited partnership.

IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

Between:

**IN THE MATTER OF JUBILEE GENERAL 2 LIMITED (IN
ADMINISTRATION)**

AND

**IN THE MATTER OF JUBILEE GENERAL 3 LIMITED (IN
ADMINISTRATION)**

AND

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

AND

IN THE MATTER OF JUBILEE SCHEME 2 LP (IN DISSOLUTION)

AND

IN THE MATTER OF JUBILEE SCHEME 3 LP (IN DISSOLUTION)

AND

**IN THE MATTER OF THE LIMITED PARTNERSHIPS (GUERNSEY) LAW,
1995 (AS AMENDED)**

APPLICATION FOR DIRECTIONS

Judgment handed down: 18th August 2017

Before: Sir Richard Collas, Bailiff

Advocate for the Applicant:

Advocate M C Newman

1. This application is made in the course of the winding up of two limited partnerships that were dissolved pursuant to Orders of the Royal Court dated 9 December 2016 and is made by Alexander Adam and Matthew Smith both of Deloitte LLP who were appointed as joint administrators of the general partner and joint liquidators of the limited partner in each of the two limited partnerships concerned. For convenience I will refer to them as “the Liquidators”. The general partners are Jubilee General 2 Limited (in Administration)

("JG2L") and Jubilee General 3 Limited (in Administration) ("JG3L") and the limited partnerships are Jubilee Scheme 2 LP (in Dissolution) ("JS2") and Jubilee Scheme 3 LP (in Dissolution) ("JS3"). I refer to JS2 and JS3 as "the two Limited Partnerships". The application is made *ex parte* under the statutory provisions which enable the administrator of a company in administration and, separately, the liquidator of a limited partnership to seek directions from the Court namely: pursuant to section 379(3) of The Companies (Guernsey) Law, 2008, as amended ("Companies Law"); and Section 30(12) of The Limited Partnerships (Guernsey) Law, 1995, as amended ("Limited Partnership Law").

2. The issue concerns the power to sell, lease or otherwise deal with the beneficial interest and legal title to the assets of a dissolved limited partnership. I am asked to consider two alternatives. The first proposition is that the liquidator of a limited partnership has the power to sell, lease or otherwise deal with the beneficial interest and legal title to the assets of the limited partnership in the name of the limited partnership (in dissolution) acting by its liquidator. The alternative proposition is that it is the administrator of the general partner (in administration) acting exclusively at the direction of the liquidator of the limited partnership who has the relevant power and would do so in the name of the limited partnership (in dissolution) acting by its liquidator. The Liquidators have been acting in accordance with the first of the two alternatives and have been advised by their Advocates that it is legally correct to do so. The "alternative proposition" (as I describe it in this judgment) has been raised by an Advocate acting for a party which has expressed an interest in acquiring property from one of the two Limited Partnerships, JS3.
3. It is believed to be the first occasion on which such an issue has arisen in connection with the winding up of a dissolved limited partnership. The application involves a question of law which may have wider implications for other limited partnership dissolutions in the future. I am asked to deal with a matter of legal principle so I have not been given the details of the proposed transaction. As the other party has not been joined to the application, the decision will not be binding on the prospective purchaser.

The Court's power to give directions

4. Section 30(12) of the Limited Partnership Law provides that: "*the persons conducting the winding up of a limited partnership may seek the Court's directions as to any matter arising in relation to the winding up; and upon such an application the Court may make such order as it thinks fit.*" Section 30(12) is similar to Section 379(3) of the Companies Law (the other provision under which the application is made) which enables the administrator of a company in administration to seek directions. Both sections are similar to section 426 of the Companies Law which 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 a company and upon such an application the Court may make such order as it thinks fit.*" The scope of Section 426 has been considered by the Deputy Bailiff in re Kingston Management (Guernsey) Limited and Amazing Global Technologies Limited [2011-12] GLR 670 and in the matter of Huelin Renouf Shipping (Guernsey) Limited (in liquidation) (unreported, Royal Court, judgment 46 of 2015).
5. The Deputy Bailiff drew assistance from commentary in Keay, McPhersons Law of Company Liquidation, 2nd Ed (2009) in relation to Section 168 (3) of the Insolvency Act 1986. The Deputy Bailiff accepted that the wording of Section 426 is potentially broad and stated "*in my opinion, the natural meaning of the words enables a liquidator to seek assistance from the Court in relation to how to deal with something that has arisen during the course of the winding up of a company in question, and which the liquidator has to resolve as part and parcel of the liquidation.*" The commentary in McPhersons

did not attempt to catalogue all the situations in which an application might be made but said it includes an application “to seek resolution of issues of legal procedure”.

6. I respectfully agree with the Deputy Bailiff and with his opinion quoted above. I am satisfied that Section 30(12) of the Limited Partnership Law and Section 379(3) of the Companies Law give me jurisdiction to hear the application notwithstanding that, as a result of it being *ex parte*, my ruling will not be binding upon any other party as it does not create an estoppel. The status of any decision is explained in McPherson’s commentary:

“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 a breach of duty. The provision is essentially concerned with action which is future at the time of the application being heard and it provides an administrative non adversary proceeding..... 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.”

Background

7. The application arises in the context of the winding up of the Long Port Group, the assets of which included properties situate in the United Kingdom and Guernsey. The assets of the two Limited Partnerships are properties in Guernsey. As I have said, the Liquidators have to date been acting in accordance with the first of the two propositions set out above. In a supporting affidavit sworn by Alexander Adam on 9th August 2017, he explained that “in terms of the sale and leasing of assets the vendor or landlord (as the case may be) has at all times been stated to be “Jubilee Scheme 2LP (in dissolution) acting by its joint liquidators)” or “Jubilee Scheme 3LP (in dissolution) (acting by its joint liquidators)” (again, as the case may be). During a recent transaction it has come to the Applicant’s attention that this might not be a legally correct statement of the position with regards to the identity of the vendor of real property (i.e. the identity of the actual vendor was disputed) and in order to ensure that good legal title is given in all legal transactions, and in respect of any leases that the identity of the landlord was, and will be correct, the Applicants have decided to seek the Court’s directions on this critical issue.”

The alternative proposition

8. The alternative proposition advanced by the Advocate acting for the potential purchaser of one of the properties of JS3 was explained in email correspondence with the Liquidators’ Advocates. The submission is summarised in the following paragraphs of the Skeleton Argument in support of the application prepared by Advocate Newman:

“16.JG3L is the legal owner of the real property in question and is the party with whom any third party must contract in any transfer of or exchange of rights in that real property. The JS3 Order states at paragraph 3 that the joint liquidators act “... with all of the powers set out at section 30(7) of the LP Law” but section 30(7) of the LP Law does not set out any powers. Section 30(7) sets out the framework or objectives to be achieved by the persons winding up the limited partnership and which, absent of any appointment of a liquidator, would have

been the general partner. This contrasts with section 413 of the Companies law which states that:

“(4) A liquidator appointed by the Court shall be sworn and has power ...”

17. The Companies Law, therefore, specifically confers power on the liquidator to undertake the acts specified in a way in which section 30(7) of the LP Law does not. It is submitted that it is necessary, therefore, to consider section 30(4) of the LP Law alongside section 13(1) of the LP Law which states:

“Subject to the provisions of subsection (2), a general partner has all rights, powers and duties and is subject to all restrictions, obligations and liabilities of a partner in a partnership which is not a limited partnership.”

18. The “powers” conferred on a general partner are those of a partner generally as set out at section 5 of *The Partnership (Guernsey) Law, 1995 (Partnership Law)*, the Partnership Law being of general application unless inconsistent with the LP Law (as set out in section 33 of the LP Law). This means that the general partner has the ability to bind the partnership in its ordinary business and, on a dissolution (without the appointment of a liquidator) to wind up its affairs. The effect of section 30(4) is, therefore, to strike down the power to act unilaterally in carrying on the ordinary business of the limited partnership and to wind up its affairs but not to render the general partner powerless in the sense of unable to act in the sense of carrying on business “...to the extent necessary for its beneficial winding up...” and where failure to carry on business necessary for the beneficial winding up is a contravention of for which “...each general partner shall be guilty of an offence.” (section 30(5)) of the LP Law.

19. In the context of section 13(1) of the LP Law, where liquidators have been appointed it confirms that the general partner is now under a duty to the liquidators to carry on business to the extent necessary for its beneficial winding up (as per section 30(5) of the LP Law). Accordingly, JG3L must continue to act to bring about the winding up but should do so only on each occasion under the written direction of the liquidators. This is, how section 30(7) of the LP Law comes into play with the liquidators now, in the name of and on behalf of the partnership, having the duty to direct that these acts are accomplished. Section 30(5) of the LP Law states that contravention of the accomplishment of this purpose shall be punishable with (at least) a level 5 fine of £10,000.

20. In the instant case the interests of JG3L and JS3 are aligned and the joint administrators and joint liquidators are actually the same individuals. In the instant circumstances, therefore, none of the required acts are onerous and nor will they result in any delay to the overall transactions.”

Discussion

9. Whilst I have set out the alternative proposition in some detail, I do not accept it. I prefer the view that has been taken to date by the Liquidators and their Advocates. The statutory framework governing limited partnerships is contained in the Limited Partnership Law. Part 1 deals with the requirements for the formation of a limited partnership. Section 2 requires there to be one or more general partners and one or more limited partners who together constitute the limited partnership. Section 3 provides for there to be a partnership agreement the provisions of which are binding upon the partners.

10. Part 2 of the Law contains general provisions as to the separate responsibilities of limited and general partners. Section 12 deals with limited partners. The limitations in respect of them in Section 12(1) are:

“a limited partner –

- (a) shall not participate in the conduct or management of the business of the limited partnership;*
- (b) shall not transact the business of, sign or execute documents for or otherwise bind the limited partnership.”*

11. The provisions governing general partners include, in Section 13(1):

“Subject to the provisions of subsection (2) a general partner has all rights, powers and duties and is subject to all restrictions, obligations and liabilities of a partner in a partnership which is not a limited partnership.”

They are to be found in the Partnership (Guernsey) Law, 1995 and include the power to conduct business and to acquire assets on behalf of the partnership.

12. The combined effect of Sections 12 and 13 of the Limited Partnership Law is that business is conducted and managed by the general partner who has the power to hold property on behalf of the limited partnership. The matter of ownership is expressly covered by Section 20 of the Limited Partnership Law which provides as follows:

“20. Any property of a limited partnership which is –

- (a) transferred to, vested in or held on behalf of any general partner, or*
- (b) transferred to or vested in the name of the partnership,*

shall be held or, as the case may be, deemed to be held by the general partners jointly on trust as an asset of the partnership in accordance with the terms of the partnership.”

13. Thus, prior to the dissolution of the two Limited Partnerships, the property of each was held by the general partner. The alternative proposition advanced by the Advocate acting for the prospective purchaser is that the general partner, JG3L, continues to have some involvement notwithstanding the Court order dissolving the limited partnership JS3. In my judgment that is not what the Limited Partnership Law provides.

14. The dissolution of limited partnerships is dealt with in Part IV of the Limited Partnership Law. There are a number of circumstances in which a limited partnership may be dissolved, some of which are other than upon the making of an Order by the Royal Court. The general partner has the responsibility to wind up the affairs of a limited partnership where it has been dissolved otherwise than by Court Order. That is provided for in section 30(1): *“upon the dissolution of a limited partnership its affairs shall, unless a liquidator has been appointed by the Royal Court under section 29(2) or under subsection (3), be wound up by the general partners.”*

15. In this case, the two Limited Partnerships were dissolved by Orders made on 9th December 2016 pursuant to Section 29(1). In each case, the Order appointed the Liquidators *“to wind up the LP’s affairs and to distribute its assets”* in accordance with section 29(2) which gives the Court the following powers:

“(2) Upon the making of an order under subsection (1) for the dissolution of a limited partnership or at any time thereafter, the Royal Court may make such other orders in relation to the dissolution as it thinks fit, including one for the appointment of one or more liquidators to wind up the partnership’s affairs and distribute its assets.”

16. The general provisions as to dissolution of a limited partnership set out in section 30 of the Law apply to all situations where a limited partnership is dissolved. That is to say they apply to (i) dissolution following the occurrence of one of the events specified in section 28; (ii) dissolution ordered by the Royal Court under section 29; and (iii) dissolution ordered by the Royal Court under section 30(3) that is to say where a liquidator is appointed during the course of dissolution of a limited partnership.

17. The effect of section 30(1) is to provide for the general partner to wind up the partnership where dissolution occurred under section 28 but where the Court has ordered the dissolution and appointed a liquidator under section 29(2) or section 30(3), it is the liquidator who shall wind up the affairs of the partnership.

18. That is confirmed in section 30(4). Where a liquidator has been appointed, section 30(4) declares that the powers of the general partner shall cease:

“30. (4) On the appointment of a liquidator (whether under this section or under section 29) all powers of the general partners cease; and a person who purports to exercise any power of a general partner at a time when, pursuant to this subsection, those powers have ceased shall be guilty of an offence.”

19. Section 30(7) sets out the duties and responsibilities of the persons winding up the dissolved limited partnership whether that is the general partner or a Court appointed liquidator:

“(7) Upon the dissolution of a limited partnership, notwithstanding the fact that (pursuant to subsection (8)(c) below) the certificate of registration has ceased to be valid, the persons winding up the partnership’s affairs, in the name of and for and on behalf of the partnership –

(a) may, to the extent necessary for the beneficial winding up of the partnership, prosecute, defend or settle any civil or criminal action,
(b) shall dispose of the partnership’s property and realise its assets, and
(c) shall, in accordance with the provisions of section 32 –

(i) discharge the partnership’s debts, and
(ii) distribute to the partners any remaining assets of the partnership,

the whole without prejudice to the personal liability of the partners.”

20. The Advocate who is advancing the alternative proposition contrasted section 30(7) with section 413(4) of the Companies Law and concluded that because section 30(7) does not expressly confer any powers on a liquidator, he has no powers and instead it is the general partner who continues to have the power to manage and dispose of the assets of a dissolved limited partnership. I cannot accept that view because it is in direct conflict with section 30(4).

21. The general provisions in Section 30 are additional to any specific powers the Court may have bestowed upon a Court appointed liquidator under Section 29(2). In the present matter, the Liquidators were specifically appointed to wind up the affairs of each of the two Limited Partnerships and distribute their assets. I am satisfied that both under the general provisions of section 30 of the Limited Partnership Law and under the terms of the Court Orders of the 9th December, the Liquidators have all the powers needed to sell or lease the properties of each of the two Limited Partnerships and that they may do so in the name of JS2 (in dissolution) or JS3 (in dissolution), as the case may be. In doing so, they would be acting in the name of and for and on behalf of each of the two Limited Partnerships.

Further submissions

22. I released this judgment in draft to Advocate Newman who, with my consent, forwarded it to other interested parties. Carey Olsen (acting for a party seeking to acquire one of the properties) have asked for some further clarification but have declined an invitation to intervene in the application which therefore remains on an *ex parte* basis. Advocate Newman has however communicated to me an issue raised by Carey Olsen.

23. The premise is that the general partners are the legal owners of the properties even though the two Limited Partnerships are in dissolution; only the legal owner of a property can convey a property; the general partners are denuded of their powers; consequently there is a legal vacuum in terms of dealing with the property. It is therefore submitted that there needs to be an act or instrument whereby legal title is transferred from the general partner and three alternative ways of doing so are suggested. First, there could be a vesting that would arise out of the dissolution and cessation of powers. It is said: *“The only person in whom title could feasible (sic) vest would be the liquidators of the limited partnership. I believe we are agreed that the vesting alternative does not work because the Court may only vest real property in a person in very limited and specific circumstances that are not met here”*. The second is that someone else could be bestowed with the power to transact, such as a liquidator but that option, it is said, would not fill the gap as the general partner would have to be a party to the conveyance. The third option could be to allow the general partner to act to effect the sale.

24. I do not accept that the Limited Partnerships Law has created a legal vacuum but if it had done, the Court would seek to interpret the Law in such a way as to avoid a vacuum.

25. Care needs to be taken in this context when referring to “legal ownership of real property” or the “legal title to real property”. A limited partnership is a creature of statute and is, it may be thought, an unusual creature. It has the capacity to have assets but it cannot hold property in its own name; instead property is transferred to and vested in a general partner who holds, or is deemed to hold, the property on trust as an asset of the limited partnership in accordance with the terms of the partnership (section 20 of the Limited Partnership Law). Unless the limited partnership has been dissolved and a liquidator appointed by the Court, the only person with power to deal with the property is the general partner (section 13(1)). Upon the appointment by the Court of a liquidator of a limited partnership all the powers of the general partner cease immediately and if a general partner purports to act thereafter it will be guilty of an offence (section 30(4)). Any suggestion that the Court could then authorise a general partner to act in some way in order to vest the real property in someone else would contradict section 30(4). The Court cannot make an order that would require a general partner to commit a criminal offence.

26. It is not necessary to do so. The answer to the problem lies within the provisions of the Limited Partnership Law. The property continues to be an asset of the limited partnership

that owned it prior to dissolution. What has happened is that upon the appointment of a liquidator the power to dispose or deal with the property of the limited partnership has passed from the general partner to the liquidator. That has happened by operation of law. There are no further instruments required.

27. The property remain the asset of the limited partnership but there are situations where by operation of law the ownership of property may pass from one person to another without any instrument of vesting such as on the death of the owner where "*le mort saisit le vif*". There are other situations where by order of the Court the power to deal with property may pass from one person to another such as on the appointment of a guardian or on the grant of an Administration Order under The Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006. In those situations there may be an instrument registered in the records of the Greffe to record what has happened such as the registration of a will of realty or of the Act of Court appointing the guardian or the Administration Order. That is simply an act of registration in order to give notice "to the world" and provide an instrument approved by the Court on which parties, including third parties acquiring property, may rely when dealing with the property. Similarly with an Act of Court appointing a liquidator to a dissolved limited partnership, the Act of Court will have been registered and that is the notice on which third parties may rely when dealing with the liquidator in relation to the properties of the dissolved limited partnership in the name of and for and on behalf of the limited partnership.

Conclusion

28. In conclusion, the provisions both of the Limited Partnership Law and of the Court Orders of 9 December 2016 dissolving the two Limited Partnerships and appointing the joint liquidators to wind up their affairs and distribute their assets operate to bestow upon the joint liquidators (or in this case either of them acting alone under the terms of their appointment) of the two Limited Partnerships the power to sell or lease the real property of each of JS2 and JS3 which they may do "*in the name of and for and on behalf of the partnership*" (quoting section 30(7) of the Limited Partnership Law) notwithstanding that the conveyances by which the properties were acquired will have declared the purchaser to have been the general partner as general partner of the limited partnership concerned.