Providence Investment Funds PCC Limited & Providence Investment Management International Limited
Royal Court
4th October 2017

JUDGMENT 44/2017

Application under Section 4(3)(b) of the Protection of Investors (Administration and Intervention) (Bailiwick of Guernsey) Ordinance, 2008, by the Administration Managers for the Courts approval on an agreement, in order to be able to pursue proceedings against PwC, if and as advised.

IN THE ROYAL COURT OF GUERNSEY

Civil No 2084

ORDINARY DIVISION

IN THE MATTER OF THE PROTECTION OF INVESTORS (ADMINISTRATION AND INTERVENTION) (BAILIWICK OF GUERNSEY) ORDINANCE, 2008

AND IN THE MATTER OF

(1) PROVIDENCE INVESTMENT FUNDS PCC LIMITED
(in administration management)
and
(2) PROVIDENCE INVESTMENT MANAGEMENT INTERNATIONAL LIMITED
(in administration management)

AND IN THE MATTER OF AN APPLICATION BY THE JOINT ADMINISTRATION MANAGERS

Hearing date and decision given: 6th July 2017

Written judgment handed down: 4th October 2017

Before: Her Hon Hazel Marshall QC Lieutenant Bailiff

Counsel for the Applicants: Advocate Mathew C Newman

Cases and legislation referred to:

Legislation:

(a) Guernsey
Protection of Investors (Administration and Intervention) (Bailiwick of Guernsey) Ordinance, 2008, s. 4(3)(b), Schedule, paras 2 and 5
Companies (Guernsey) Law, 2008, s. 426

(b) United Kingdom
Insolvency Act 1986, s 163(8)

Cases:

(a) Guernsey

IFS Investments Ltd v Manor Park (Guernsey) Ltd (Royal Court Judgment 13/2004)
Flightlease Holdings (Guernsey) Limited v Flightlease (Ireland) Limited [2009-10] GLR 38
Amazing Global Technologies Ltd (in liquidation) and Kingston Management (Guernsey) Limited (in liquidation) (2012 Royal Court Judgment 29/2012)

(b) Jersey

Re the Valetta Trust [2012](1) JLR 1
Barclays Wealth Trustees (Jersey) Ltd and another v Equity Trust (Jersey) Ltd and another [2013] (2) JLR 22.

(c) England and Wales

Glegg v Bromley [1912] 3KB 474
London & Regional (St George's Court) Limited v Ministry of Defence [2008] EWHC 526
In re Longmeade Limited (in liquidation) 2016 Bus LR 506

(d) Cayman Islands

In the Matter of ICP Strategic Credit Income Fund Limited and ICP Strategic Credit Maser Income Master Fund Limited (unreported) (Grand Court of the Cayman Islands (Financial Services Division) 4 April 2014)

JUDGMENT

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1. The two above named companies ("PIF" and "PIMIL") are companies registered in Guernsey and placed in Administration Management by Order of this Court made on 9th August 2016 on the application of the Guernsey Financial Services Commission. Messrs Philip Bowers, Alexander Adam and Andrew Isham of Deloittes were appointed as their Joint Administration Managers. By a further order of the Court on 22nd September 2017 the Joint Administration Managers were also appointed liquidators of Providence Global Limited ("PGL"), the parent company of PIF and PIMIL. Certain other group companies were also placed in voluntary liquidation on the same day, with the Administration Managers as their joint liquidators.

2. Following their appointment, the Joint Administration Managers investigated the destination of investment funds received by PIF, which had been supposed to be transmitted to a Brazilian company, Providence Fomento Mercantil ("PFM") to invest in Brazilian debt factoring arrangements. They concluded that these funds had been largely diverted to PGL or another company in the Providence Group and seemingly lost. They were unable to obtain any satisfactory account of the Brazilian operations, being frustrated in this by a lack of co-operation from one Antonio Busanelli, the principal and controlling shareholder of PFM and an associated Brazilian company. The prospects of recovering investors' funds, reckoned to be some £37.2M subscribed mainly since June 2013, appeared and appear to be very remote.

3. The Administration Managers have made other investigations. PricewaterhouseCoopers CI LLP ("PwC") were the appointed auditors of PIF and PIMIL at the material times. Having taken legal advice in both Guernsey and the UK, the Administration Managers have come to the conclusion that there is a good case that PwC negligently failed in its duties, both to PIF and to investors, and thereby caused them loss. The details of this are not material in this public judgment, and neither are details of the correspondence which has ensued. It suffices

to say that the situation is such that the Administration Managers consider that matter may not be capable of satisfactory resolution without litigation.

4. However, the Administration Managers' lack of funds is a well-publicised fact. They have therefore investigated the possibility of obtaining litigation funding from a third party. They have been able to reach a potential agreement with Manolete Partners plc who specialise not only in litigation funding but specifically in insolvency litigation funding. They have drawn up the terms of an agreement which they have entered into on a conditional basis, and which they regard as beneficial to PIF and its creditors, and they seek the Court's approval of this agreement in order to be able to pursue proceedings against PwC, if and as advised. They do so pursuant to the provisions of Section 4(3)(b) of the Protection of Investors (Administration and Intervention) (Bailiwick of Guernsey) Ordinance, 2008 ("the 2008 Ordinance"), which provides generally for an administration manager to be able to

> "*apply to the court for directions in regard to any matter arising in the course of his administration*."

5. The actual terms of the proposed agreement are, obviously, commercially sensitive. The legal advice obtained by the Administration Managers is not only sensitive but also legally privileged. Although both these matters have been put in evidence on this application, the court file is therefore sealed, and the hearing of the application has taken place *in camera.* However, Advocate Newman informs me that there has been no previous case in this jurisdiction which considers the validity of litigation funding agreements in this context, and the principles upon which the court will act if asked to approve such an agreement.

6. The issue of whether such an agreement would be void in Guernsey law on the basis that it was champertous was one which I raised specifically with Advocate Newman when I received the papers in advance of the hearing and consequently, he has researched various authorities on the point and provided a comprehensive skeleton argument. In view of the absence of previous authority, he invited me to provide my judgment on this application in writing, and I have therefore done so.

Hearing in camera

7. With regard to Advocate Newman's application for the matter to be heard in camera, this is an application which I readily granted. This court's inherent jurisdiction to do so in appropriate cases is undoubted. It recognises that whilst the basic principle is that justice must be done in public, where doing so would itself frustrate justice, privacy should prevail, although only to the extent which appears necessary: see per Day LB in *IFS Investments Ltd v Manor Park (Guernsey) Ltd* (Royal Court Judgment 13/2004). Where the court is being asked to approve a course action by those in an office over which the court exercises a supervisory jurisdiction, whether this is purely statutory (such as company liquidators and administrators) or originates in common law (such as trustees or the administrators of deceased estates), it may be questionable whether the term "doing justice" is really apposite; the matter is more in the nature of an administrative matter than the determination of rights. The court will therefore be far readier to make privacy orders in such cases, certainly as long as the particular case is not a contentious matter.

8. In this case, Advocate Newman argues, quite rightly in my judgment, that the Joint Administration Managers' application for funding approval for potential litigation is a matter of commercial sensitivity, is akin to a *Beddoe* application in trust cases, which are normally conducted *in camera*, and that the point under consideration is really an administrative matter which is not the business of anyone else but the Joint Administration Managers and the Court, in any event.

9. I accept all these propositions, although with the qualification that the investors and creditors of PIF do have an indirect interest in the terms of the agreement, the objective of which is to do the best that can reasonably be done for them in the circumstances. Their potential interests are thus logically affected, and it is those interests which the scrutiny of the court on this application is intended to protect. That protection is very much at the general level of oversight, though, as to whether the step which the Administration Managers are proposing to take appears to have been decided on in good faith and through a sound process, and is an apparently reasonable decision to make - in other words, an approach akin to the *Wednesbury* principle in public law. However, none of this, in my judgment, militates against the general correctness of the proposition that the subject matter of this application is, in principle, entirely appropriate to be considered at a hearing in private.

The application – general context.

10. Moving on to the substance of the application, Advocate Newman makes some introductory points about the principles which will apply to the Joint Administration Managers' exercise of their powers. The provisions of s. 4(3)(b) of the 2008 Ordinance, quoted above, are in materially similar terms to those of s. 426 of the Companies (Guernsey) Law 2008, which provides, in almost identical wording, for the liquidator of a company to be able to

> *"seek the Court's directions with regard to any matter arising in relation to the winding up of the company"*

Advocate Newman therefore submits that the Court's jurisdiction can be expected to operate on similar principles.

11. He refers to *Amazing Global Technologies Ltd (in liquidation) and Kingston Management (Guernsey) Limited (in liquidation)* [2011-12] GLR 670 as an example of the practice regarding the operation of a liquidator's powers. He argues further, relying on the well-known principles set out by Southwell LB in *Flightlease Holdings (Guernsey) Limited v Flightlease (Ireland) Limited* [2009-10] GLR 38, that in interpreting such practice, English decisions on the similarly worded provision of s. 163(8) of the Insolvency Act 1986 can be looked at for assistance. None of these propositions appears to me to be at all controversial.

12. Advocate Newman emphasises that the Joint Administration Managers are not seeking the court's sanction to bring legal proceedings. The Joint Administrative Managers have a specific statutory power to take proceedings on behalf of the company (see Paragraph 5 of the Schedule of the 2008 Ordinance) and by obvious implication, therefore, they have the power to make the commercial decision to do so. This application is not, therefore, asking the court to make a commercial decision but is, rather, asking the court to authorise the entering into of the funding agreement as a mechanism for implementing it.

13. There are two reasons for this. The first is that the agreement of Manolete to enter into the funding agreement itself is conditional upon the court's giving its sanction to the Joint Administration Managers to do so. The second reason, which is more substantive, is that under the terms of the funding agreement, Manolete will receive a specified share in any proceeds of the litigation, and consequently such proceeds will not accrue entirely to the benefit of the administration itself. The court's sanction is therefore sought so as to protect the parties against any future action by investors or creditors of the company who might challenge this agreement or claim that it was entered into in breach of duty.

14. On receiving the papers, the court specifically raised with Advocate Newman, as a point requiring to be dealt with at the hearing, the question whether Guernsey law contained any principles similar to the English law of champerty which can render it unlawful to fund another's claim in return for a share of the proceeds, and this point, together with more general arguments relating to the merits of the funding agreement itself, have therefore been the subject of detailed consideration at the hearing.

Validity of litigation funding agreements.

15. "Maintenance" is the perceived vice of a third party funding or lending assistance to the pursuit of a cause of action in which he himself has no interest. "Champerty" is the perceived vice of funding or maintaining a cause of action belonging to another in return for a share of the proceeds. Both are prohibited as a matter of public policy at common law. Advocate Newman accepts that this would apply in the common law of Guernsey. He points out that there is some general support for this from the seventh article of the Oath of the Guernsey Bar, supported by its Rules of Professional Conduct, which lays down that an advocate may not operate on the basis of contingency fees, ie bargaining with his client for a share of the proceeds of the client's cause.

16. The above policy arises out of the law's distaste for incentivising litigation as a source of profit rather than confining it to its proper purpose of the redress of wrongs. Agreements involving maintenance or champerty are unlawful and void at common law. However, in the modern world, these doctrines have been scrutinised, narrowed and subjected to exceptions in pursuit of another tenet of public policy, namely that of improving or facilitating access to justice.

17. Under the original doctrine, the assignment of a bare cause of action, (ie a cause of action not attached to other property being assigned) to a third party with no interest of his own in that cause of action, is unlawful and void. Where an insolvent person or company has a right of action but no funds with which to pursue it, strict application of this doctrine would render it impossible for a liquidator (for example) to realise anything from a company's mere right of action for the benefit of its creditors. This has led to a recognised exception for insolvency in English law since at least the 19th century, whereby an assignment of a cause of action belonging to the bankrupt or the insolvent company, by the trustee in bankruptcy or the liquidator, in return for a sum of money, even expressed as a share of the proceeds of the action, was ruled by the courts to be valid and permissible, on the basis that it could be analysed as an exercise of the statutory right of the trustee in bankruptcy or liquidator to sell the bankrupt's or insolvent company's property. The public policy considerations driving this interpretation, and thus permitting this limited exception to the prohibition of maintenance or champerty, can readily be understood.

18. A further recognised exception to the doctrine was created at least as early as 1912 (*Glegg v Bromley* [1912] 3KB 474) by recognition of a distinction between an assignment of a bare cause of action (unlawful), as contrasted with an assignment of the *proceeds* (or a part of them) or "fruits" of a cause of action, characterised as the assignment of future property (lawful and valid). In fact, this distinction could be taken advantage of by little more than careful drafting. However, as a justification of more substance it has been interpreted as reflecting that the vice at which the doctrine of champerty is aimed is avoided if the assignee has no control over the litigation, such control remaining in the hands of the owner of the cause of action, himself.

19. The state of English law on the subject of maintenance and champerty generally was summed up by Coulson J in *London & Regional (St George's Court) Limited v Ministry of Defence* [2008] EWHC 526 at [103] in four paragraphs, which I do not quote because I do not think

that that summary can be relied on as reflecting Guernsey law – and Advocate Newman did not seek to do so. This is because English law had, over the previous 25 years or so and since that case, developed its principles relating to maintenance and champerty on a more liberal and flexible basis than may apply in Guernsey, or be thought appropriate as a matter of incremental development of the law in Guernsey.

20. However, in the context of insolvency litigation funding arrangements Advocate Newman did refer me to certain comments of Jones J in the Cayman Islands case of *In the Matter of ICP Strategic Credit Income Fund Limited and ICP Strategic Credit Maser Income Master Fund Limited* (unreported) (Grand Court of the Cayman Islands (Financial Services Division) 4 April 2014). In that case, in the context of an application by a liquidator for leave to commence proceedings in the United States under a contingency fee agreement with attorneys in the United States, Jones J reviewed the general principles with regard to the lawfulness of litigation funding agreements in the Cayman Islands. Whilst his judgment is an impressive and helpful review of principles, its limits and context must be borne in mind. Although it obviously cannot be taken as a general account of principles applying in Guernsey law, Jones J makes certain points at [18] on which Advocate Newman relies, and which do appear to me to be both well-established and unexceptionable expressions, in many modern jurisdictions, of the limits of the doctrine of champerty in a liquidation context:

> *"In the context of liquidation proceedings,……..First, an outright sale by an official liquidator by way of legal assignment, of a cause of action where the price is expressed to be a percentage of the proceeds of the action is a valid exercise by the official liquidator of his statutory power to sell the company's property. Second, an assignment of a percentage of the proceeds of a cause of action pursuant to a litigation funding agreement is a valid exercise of the official liquidator's statutory power to sell the company's property, provided that the funder is given no right to control or interfere with the conduct of the litigation. It follows that where the court is asked to sanction a litigation funding agreement, its terms will be carefully scrutinised to ensure that it does not directly confer upon the funder any right to interfere in the conduct of the litigation or indirectly put the funder in a position in which it will be able, as a practical matter, to exert undue influence or control over the litigation."*

(The third point made, reinforces the point that these permissions are confined to causes of action which belong to the company and not to those personal to the liquidator, because of their justification being that of the statutory authority to sell the company's assets, a point which is not relevant to this case.)

21. The question of litigation funding agreements generally has been considered in Jersey relatively recently in *Re The Valetta Trust* [2012](1) JLR 1, a decision which was then endorsed after more focussed argument in *Barclays Wealth Trustees (Jersey) Ltd and another v Equity Trust (Jersey) Ltd and another* [2013] (2) JLR 22. In the former case, Birt B, sitting with Jurats, there authorised a trustee to enter into a litigation funding agreement with a third party, to fund the pursuit of a cause of action against former trustees for selling property at an undervalue, in circumstances where neither the trust nor the complaining beneficiaries had the funds to take this forward. He analysed the position as being that the doctrine of champerty arose for similar reasons to those which had given rise to it in English law, namely to protect the purity of justice from the corrupting effects of its pursuit being taken over by rich and powerful men. He concluded that in a modern context the litigation funding agreement in question was not contrary to the essence of this public policy because it did not give control of the litigation to the litigation funder, whose only right was to be kept informed of progress. It enabled the plaintiffs to keep a substantial proportion of the proceeds of the claim, and it did not prejudice the prospective defendant because the agreement also

provided for the payment by the litigation funder of adverse costs orders. The agreement therefore did not tend to "corrupt public justice" but, rather promoted the objective of facilitating access to justice. The Trustee was therefore authorised to enter into the funding agreement, although Birt B pointed out that this was an agreement for third party funding, and entirely different considerations would apply with regard to arrangements between a litigant and his own legal representatives.

22. It is clear that Jersey has had more legal sources relating to this point than does Guernsey law, as is indicated by the legal references in that case. Advocate Newman has assured the court that there are no reported cases in Guernsey, and that the customary law texts do not, so far as he is aware, deal with the point.

23. Having reviewed these various authorities and submissions I conclude that, in principle, the law of Guernsey will permit the assignment of a cause of action for value by a liquidator, and will also permit the entering into of a litigation funding agreement by a liquidator on appropriate terms, notwithstanding that the doctrines of maintenance and champerty are part of Guernsey law. The well-established justification for this is the limited one that it is to be interpreted as authorised as part of the statutory powers of a liquidator to sell the company's assets, and any right of action vested in the company is such an asset. Administration is a statutory creation, established for similar but more nuanced purposes than liquidation, but an administration manager's powers and their justification are analogous to those of a liquidator, and I am therefore satisfied that the same principles would apply to the exercise of the Joint Administration Managers' powers in this case. These include a power to realise the company's assets: see Paragraph 2 of the Schedule to the Ordinance.

24. Subject, therefore, to the terms of the particular Agreement being appropriate, I will be prepared, in principle, to authorise the Joint Administration Managers to conclude the proposed litigation funding agreement with Manolete.

Terms of the litigation funding agreement.

25. Consideration of the terms of the litigation funding agreement falls into two slightly different parts for the purposes of this application. The first is the general question whether the court should approve the entering into of such a litigation funding agreement by the Administration Managers at all, in general principle. The second is the question whether the terms of the particular agreement are such that it does not offend the principles of champerty. These are separate matters, although they each affect whether the court can or should approve the agreement.

26. With regard to the general point, although Advocate Newman referred me to the recent English case of *In re Longmeade Limited (in liquidation)* 2016 Bus LR 506, and relied on this, and particularly paragraph [72], as an indication of the matters which the liquidator in that case, and therefore the court by extension, would take into account in considering whether to pursue a claim using a litigation funding agreement, the situation in that case was somewhat different. There, the liquidators had initially sought the court's sanction to commence legal proceedings, because they were obliged to do so under the old law, but during the currency of the application that law had been changed to entrust the decision whether or not to commence proceedings to the liquidators themselves. They were entitled to make it without the sanction of either the court or the committee of creditors – although they would of course be entitled to seek the court's approval or directions, in the usual way. Snowden J's remarks were made in this transitional context and were therefore framed as guidance on the matters which the liquidators would wish to and should take into account when themselves making that decision.

27. The particular matters were

    (a) the merits and prospects of success of the prospective litigation,

    (b) the adequacy of funds available to the liquidator,

    (c) the likely costs to be incurred, (and hence diminution in funds available for distribution) if the proceedings should fail and

    (d) the proportion of damages which the litigation funder would be taking under the agreement if the proceedings were successful.

28. These matters have all been alluded to and explained in the affidavit evidence in support of this application, together with a further matter, which I would add to the above list namely

    (e) how and why the office holders lighted on and chose the particular litigation funder as their counterparty.

29. I entirely endorse these as the considerations which, in context, it would be right for a liquidator, and similarly an administration manager, to take into account in making his decision. Since, in Guernsey law, the commercial decision is that of the liquidator or administration manager and not that of the court, the relevance of those matters for my purposes here is only second-hand. I merely need to be of the view that, on the basis that the Administration Managers have apparently given proper consideration to such factors, the decision which they have made to enter into the litigation funding agreement with Manolete is a decision which a reasonable Administration Manager could properly have made. I am satisfied that it is; I have no doubt that, in principle, it is within that range of decisions.

30. The second aspect is the overarching public policy aspect. It is therefore whether the terms of this proposed Agreement are such that as a matter of public policy the court can properly approve the Administration Managers' entering into it unconditionally.

31. The form of the Agreement is, I understand, a standard form used by Manolete, possibly slightly adapted to fit Guernsey terminology, but otherwise following their usual practice with regard to funding litigation in the United Kingdom. It specifically provides that it is to be governed by English law. It has also presumably been drafted with a view to meeting the qualifying criteria for a valid such agreement in English law. That does not necessarily mean, of course, that they can simply be assumed to meet such criteria in Guernsey law.

32. I have referred above to the general terms of a litigation funding agreement which caused Birt B to conclude in *Re The Valetta Trust* (above) that it was lawful and appropriate to authorise a trustee to enter into a litigation funding agreement for the purpose of pursuing a cause of action vested in the trust. These points were all directed at the issue whether such an agreement should be held to be void for tending to corrupt public justice. The presence of certain terms, and in particular those by which control of the litigation process was retained in the hands of the owner of the cause of action, and the litigation funder was precluded from taking such control, or exercising "undue" influence over the conduct of the action, were held to be important facts to support that this was not the case, and the agreement could be approved.

33. The authorities show that the degree of control of the conduct of the litigation which a funding agreement may confer on the funder is regarded as central because this is at the heart of what is regarded as making champerty objectionable, namely that it distorts or perverts the proper process and operation of public justice. At a general level, champerty conduces to

causes of action being pursued and the courts being used, not for the purpose of redressing legal wrongs, but for the collateral purpose, which may even become the principal objective, of making financial gain for the litigation funder. At the particular level, it leads to defendants or potential defendants being pursued or harassed in an unfair and unreasonable manner or degree. It is therefore the extent to which any litigation funding agreement might have the potential to take the pursuit of the claim outside the range of normal conduct which might be expected from a litigant pursuing a claim with his own funds which is the essence of the objectionability of a champertous agreement, and it seems to me that this is the underlying consideration which needs to be addressed.

34. I have therefore looked at the terms of the funding agreement with this point in mind. As this is a public judgment, I will not set out the terms of the litigation funding agreement insofar as it seems to me that they may have commercial sensitivity, but I do feel that I can and should indicate the nature of the terms which I see as potentially material to this question of control, and the potential distortion of litigation conduct.

35. First, although it is a slightly different point, the agreement provides for the litigation funder to pay not only the costs of the Administration Managers in pursuing the proceedings but also any adverse costs order which may subsequently be made against them if the claim is unsuccessful. The protection which this confers on the potential defendant is a kind of basic fairness. The course of litigation could be distorted if a defendant is pursued in circumstances where even if he were to succeed, an adverse costs order would be worthless. This aspect has plainly been seen as a material point, if an agreement is not to be struck down for being champertous, but I am satisfied that a sufficiently protective term does appear in this agreement.

36. As regards provisions which might be thought directly or indirectly relevant to the issue of how much control the litigation funder has over the conduct of the litigation itself, I note the following.

    (i) First, the "Acting Advocates" to be instructed on behalf of the company are, effectively, a firm agreed or approved by the litigation funder, although the proposed plaintiffs (the Administration Managers) acknowledge that there has been no "improper" influence, nor restriction on their freedom of choice, as to the choice of Advocates.

    (ii) The proposed plaintiffs agree to "consult" with the litigation funder in relation to all proposed steps in the claim, although it is expressly recorded that this is without ceding control to the litigation funder.

    (iii) The proposed plaintiffs agree to follow the advice of the Acting Advocates and not to discharge them without "consultation" with the litigation funder.

    (iv) The proposed plaintiffs agree to keep the litigation funder informed as to the progress of the action and to take counsel's opinions as to aspects of the Claim if requested by the litigation funder.

    (v) The funder has a right to terminate the agreement in respect of all or any Claims but remains obliged to pay amounts due up to the date of termination.

    (vi) The proposed plaintiffs agree to pay over to the funder the "applicable part" of the proceeds of the claims, as specified in the agreement, and

    (vii) The agreement is governed by English law.

37. As a matter of general impression, plainly the thrust of the Agreement is aimed at emphasising that operational decisions remain with the proposed plaintiffs. However, it does constrain those decisions in that they are required to follow the advice of the Acting Advocates. This obviously provides comfort to the litigation funder that its funds are not being used ill-advisedly. In my judgment that is perfectly reasonable, and indeed one could not expect a party to be willing to fund litigation without some assurance that its funds were going to be used responsibly, on steps which were justified according to legal advice. The provisions with regard to the actual plaintiffs keeping the litigation funder informed, and seeking legal opinion as and when required are in the same vein, and appear reasonable in principle.

38. None of that seems to me, though, to amount to "control" of operational decisions by the litigation funder, in any practical sense. Indeed, insofar as the material terms limit what would otherwise be the total freedom of action of the Administration Managers as litigants and owners of the cause of action, it does so only so as to preclude ill-advised or arbitrary litigation steps. In that way, it actually operates against the kind of ills at which the law of champerty is aimed.

39. At a more specific level, I am not sure how much weight the profession of lack of influence in the choice of Advocates (see (i) above) can really bear, but given that the Advocates' duties will be to conduct the litigation in the best interests of the company as its client, I cannot see that the choice of Advocate's firm could in fact have any practical effect with regard to the nature of what makes champerty objectionable.

40. Bearing in mind that control and influence can be exercised indirectly, I have been alert as to whether any provisions of the Agreement could be used for such indirect effect. The provision which has caused me most concern on this score is the termination provision, as one can envisage that a threat of termination could be used to influence the decisions or approach taken by the plaintiffs, if not to the litigation funders' liking. However, I am satisfied that, in the context of the other provisions of the Agreement which lay down guiding principles as to how it is agreed that the litigation will be pursued in accordance with legal advice, etc, there is no serious prospect of this occurring in practice, certainly not to the extent of becoming sufficient of a vice as to infringe the policy objectives of the law of champerty.

41. Lastly, I raised the point with Advocate Newman that the agreement is expressly governed by English law. It is of course the case that, when considering whether to approve a litigation funding agreement, the court might be faced with the prospect of litigation abroad which could be conducted in a manner which would offend the laws of Guernsey, for example by the employment of contingency fees. However, that is not this case, and it is not a matter with which I have had to grapple, nor on which I express any opinion.

42. It is not engaged by the choice of law clause, although that clause does have the result that the terms of the litigation funding agreement itself, even though funding litigation in Guernsey, would fall to be interpreted according to the canons of English law. Whilst I find this somewhat unsatisfactory, I am told that, as Manolete is an English company, it is part of their standard terms of business and is not negotiable. This obstacle could of course affect the availability of funding for the Administration Managers if it were to render the Agreement unacceptable. I have concluded, however, that it should not do so. It does not seem to me that the terms of the litigation funding agreement would in practice fall to be construed to any materially different effect in English law from those under Guernsey law, and certainly not in any respect so materially different that it might cause the operation of the agreement to appear to infringe the Guernsey law of champerty. I therefore dismiss this consideration.

Conclusion

43. In conclusion, therefore, I am satisfied both that the Administration Managers have reasonably reached a decision to enter into a litigation funding agreement, and in particular this litigation funding agreement, in order to enable them to pursue the identified claims of the company against PwC. I am also satisfied that the structure of the Agreement is permissibly analysed in law as amounting to an exercise of the Administration Managers' statutory power to sell an asset of the company (its claim), and that the terms of the agreement by which this is proposed to be effected do not infringe the Guernsey law of champerty, in particular in that they do not permit the litigation funder to exercise control or undue influence over the prospective conduct of such litigation, certainly not so as to be objectionable in all the circumstances.

44. I therefore grant the relief sought by the Joint Administration Managers on this application and I also order that the costs of this application be treated as costs of the administration.

Her Honour Hazel Marshall QC
Lieutenant Bailiff