



Eagle Holdings Limited
Royal Court
9th November 2017

JUDGMENT
48/2017

Application by liquidators for approval to increased costs budget

IN THE ROYAL COURT OF GUERNSEY

Civil No. 1917

ORDINARY DIVISION

In the Matter of Parts XIII and XIV of the COMPANIES (GUERNSEY) LAW 2008

And in the matter of

EAGLE HOLDINGS LIMITED (in liquidation)

And in the matter of an application by the Joint Liquidators

Judgment handed down 9th November 2017

**Before: Her Honour Hazel Marshall QC, Lieutenant Bailiff,
Peter Sean Trueman Girard, Esquire, Constance Helyar-Wilkinson,
David Alan Grut Esquire, Jurats**

Timothy Le Cornu (as Joint Liquidator of the Company) in person

JUDGMENT NOTE

Legislation and other materials referred to:

Royal Court Practice Direction No 3 of 2015

Introduction – the Application

1. On 15th July 2015 the Royal Court appointed Timothy Le Cornu of KRYs Global (Guernsey) Limited and Edwad Klempka of Begbies Traynor (Central) Limited, in the UK, as joint liquidators of Eagle Holdings Limited (“the Company”), in the insolvent liquidation of that Company. As is often the case, it also imposed an express limit, the amount of which is not material, on the level of fees which the Joint Liquidators were permitted to charge to the assets of the Company in the liquidation (the “costs limit”), but gave permission to the Joint Liquidators to apply for an increase in that limit, should it be reached before completion of the liquidation. It directed that, subject to any further Court Order, such application should be considered on paper. This was all in the interests of keeping down liquidation costs
2. The affairs of the Company were relatively complex. It had 77 subsidiary companies, several of which had been struck off company registers. At one time it had had assets valued at £3.5Bn with liabilities of £3Bn. It owned loans, and also properties in several jurisdictions.
3. On 9th November 2016 the Joint Liquidators made an application for an increase in the authorized fee/costs limit by letter from Mr Le Cornu on behalf of the Joint Liquidators, directly to the court and without the involvement of advocates. He requested that the application be determined on the papers in order to save costs. After seeking some further information, but without a hearing, the Court granted an increase in the costs limit, reflecting estimated further fees for the period from 1st August 2016 to 31st March 2017. An Order granting the application was issued on 14th December 2016.
4. By a further letter of 13th July 2017 from Mr Le Cornu, the Joint Liquidators made a second increase application with regard to the costs limit, to cover estimated fees and expenses from 1 April 2017 to 31 December 2017.
5. However, the Court did not feel able to grant this application in whole or in part on the material then submitted to it by the Joint Liquidators, as it felt it had insufficient factual information regarding the liquidation, its progress, and the prospects for creditors. Also, whilst the court was informed of the anticipated level of fees (included within the increase application) for broadly categorised aspects of the Company’s liquidation to be carried out by each of the two firms involved, it did not fully understand what precise aspects of the liquidation it was intended to spend this money on, having regard to the background fact that various aspects of the liquidation, such as restoring subsidiaries to their company registers, and investigating the prospects of recovering a particular Scandinavian loan, were known by now to have been completed.
6. Having deliberated, the Court took the view that the matter was best progressed by its providing the Joint Liquidators with a note of such further factual information about the state of the liquidation which was felt to be required, and a note of its concerns with regard to lack of information or explanation in support of the quantum of fee allowance being requested by each of the Joint Liquidators’ respective firms. It also took the view that the most convenient course was to convene a hearing, to enable the Joint Liquidators to provide further information or explanations to the Court.
7. At this hearing, Mr Le Cornu has appeared in person on behalf of the Joint Liquidators. At the conclusion of the hearing, the Court did feel able to grant the second increase application, and it did so. In the course of this, it was suggested, that it would be useful to the profession, and to insolvency practitioners in particular, if the court were to provide a short note of guidance, prompted by the points which had arisen in this case, regarding the scope and form of the information with which the court would expect to be provided

upon such applications, so as to assist parties in the future. This judgment note has been prepared accordingly.

The Court's function

8. The Court's function on applications such as the present, concerning the supervision of liquidators' fees, is an oversight and scrutiny function, exercised in the interests of the creditors of the Company. This is because it is they who will, in effect, be paying the liquidators' fees, as these will be taken out of assets of the company which would otherwise be used towards satisfaction of the debts owed to them. The court, and in particular the Jurats, will therefore wish to keep abreast of the progress of the liquidation and the fees being charged by the liquidator(s), and to satisfy themselves that those fees, and the future fees for which authorisation is sought, are being reasonably incurred having regard to the complexity and the present state of the liquidation, and to its future anticipated conduct and prospects.

The kind of information required

9. The information which ought to be supplied to the court on such an application does not need to be provided in minute detail, but needs to be sufficient to enable the court to form a view as to the state of the liquidation, and the reasonableness and potential cost effectiveness of the work which is projected to be covered by the fee authorisation being sought. The level of an "executive summary" is likely to suffice in many respects.
10. The obvious first useful statement is a brief description of the affairs of the company, identifying any matters of note, such as any complexities, unusual assets, assets which are likely to be difficult to realise, or likely claims which require to be investigated, so as to set the general scene.
11. Most usefully, there should then be an estimated Statement of the Company's Affairs, together with appropriate explanatory notes behind this, (for example giving the outline workings for figures included in the Statement of Affairs). It can be expected that such a Statement and notes will broadly suffice to convey the necessary amount of detail. The Statement will obviously be updated, as necessary, for the purpose of the immediate application being made.
12. As regards the requested quantum of fee authorisation for future work which is being sought, the court will wish to identify the work which it is intended to carry out under this fee allowance, the timing of such work, and whether this will complete the liquidation. It will wish to see the specified projected fees broken down in sufficient detail to enable it to identify and assess the work which those fees are proposed to cover. Where, for example, previous costs have been broadly allocated to aspects of the liquidation which have been concluded but fees are apparently intended to continue accruing at a similar rate, this will require explanation to identify what (other) future work is envisaged. This can probably most easily be done by specifying relevant aspects of the liquidation work sufficiently clearly to identify and differentiate them, and giving estimates of future hours anticipated to be spent on them and the fees thereby expected to be incurred. Fee charging rates of staff of appropriate levels in the liquidators' firms will no doubt have been provided as a matter of course.
13. If contingency allowances are built into the authorized amount sought, then these should be clearly identified and explained.
14. The Court will wish to have a list of creditors and the amount of their claims. It will also want to see a current estimate of anticipated realisations for creditors in the time

period in question. Insofar as the pursuit of particular claims or assets may be being delayed, the court will look for explanations as to why their pursuit is thought to remain cost-effective, if this is not obvious.

15. According to circumstances, (and this is more likely where liquidations have already been in train for a long period, say around two years) the court may wish to see that creditors have been informed of the request for increased fee authorisation, with a suitable update on liquidation progress, and to see any creditor responses to such information, (although it is understood that experience suggests that responses may be very low, as creditors tend to write off their losses and turn to other matters).

Conclusion

16. In conclusion, the function of the court on such applications is not to “second guess” either the work or the decisions of the liquidator, but to review the intended expenditure of creditors’ monies and to satisfy itself that reasonable fees for appropriate work are being charged, with a view to maximising the benefit of the liquidation for creditors.
17. The above list of considerations is not necessarily exhaustive, but is set out here to help practitioners to assist the court in this function and to make any necessary court applications as efficiently and economically as possible. As indicated by the procedure in this case, but always subject to particular circumstances, the Court will be willing to entertain such applications made by the liquidator in person, in order to reduce the need to incur legal costs in the liquidation.

Her Honour Hazel Marshall QC
Lieutenant Bailiff

9th November 2017