Case Name & Citation

In the Matter of the Representations of Daisy Logistics Mezz Pledgeco Limited, Daisy Stores Mezz Pledgeco Limited and Daisy Stores II Mezz Pledgeco Limited [2023] JRC051.

Factual Background

Daisy Logistics Mezz Pledgeco Limited, Daisy Stores Mezz Pledgeco Limited and Daisy Stores II Mezz Pledgeco Limited (collectively the "**Representor Companies**") were all incorporated in Jersey in August 2020 for the purpose of bidding to acquire a retail chain. Unfortunately, the bid was unsuccessful, leaving the Representor Companies and the holding structure above them redundant.

Typically, in these circumstances the Representor Companies would have no assets or liabilities, and having never carried out any activity would have gone through the process of being summarily wound up. However, by way of an oversight, their own shareholders, being the holding entities above the Representor Companies and indeed the shareholders above those holding entities had been dissolved and accordingly ceased to exist, thereby, making summary winding up unavailable.

The Representor Companies took the view that they should not simply fall away and instead should be wound up in an appropriate way.

The notion of reinstating the holding entities was considered. However, due to the complexity, cost and the likely time frame involved, another means of dissolving the Representor Companies was desired.

The Law

The law governing "just and equitable" winding up is codified under Article 155 of the Companies (Jersey) Law 1991 (the "Law").

Broadly, the Law permits a company which has not be subject to a declaration under the Bankruptcy (Désastre) Jersey Law 1990 to be wound up if the court forms the opinion that it is just and equitable to do so or it is expedient in the public interest to do so.

If such an application is successful, and the court orders a company to be wound up under this article it may do the following to give effect to such a winding up; appoint a liquidator, direct the manner in which the winding-up is to be conducted, or make such orders as it sees fit to ensure that the winding-up is conducted in an orderly manner.

The Judgment

The Royal Court, referencing earlier Jersey case law, confirmed that the law on just and equitable winding up is based upon similar provisions under English companies' law and confirmed that English authorities were useful.

Placing reliance on these authorities, the Royal Court confirmed the generality of the words "just" and "equitable" and confirmed that these words should remain general and "not to be reduced to the sum of particular instances".

Further, referencing earlier Jersey authority on just and equitable winding up the Royal Court confirmed that its authority to order a winding up under Article 155 was a wide one.

The Royal Court gleaned guidance from a previous Article 155 application with clear factual parallels to Daisy, Salamanca Corporate Services [2016] JRC 108A ("**Salamanca**"), in which a company could not be subject to summary winding up as only one of its three shareholders was still in existence and the articles necessitated a quorum of two shareholders. Given this factual background, the Royal Court confirmed that the case law was clear in that they had wide powers to order a just and equitable winding up and ordered the just and equitable winding up of the company on three grounds:

(1) that other means of winding up the company were not available;

(2) allowing the company to simply be struck-off would be inappropriate; and

(3) the company was established for the purpose of property investment. The property had since been sold and two of the shareholding companies had been dissolved, accordingly the substantive purpose of the structure had been fulfilled. Thus, leaving the company live, solvent and dormant yet serving no purpose and not due to serve any further purpose.

Conclusions

The Royal Court concluded that the application met the criteria as set out in Article 155 of the Law and confirmed that no declaration had been made under the Bankruptcy (Désastre) Jersey Law 1990, the Representor Companies were solvent, and had no creditors. The Royal Court also confirmed that it was satisfied that summary winding up was not available to the Representor Companies for the reasons outlined above.

The Royal Court ordered that the Representor Companies be wound up, but due to the complete inactivity of the Representor Companies did not think it necessary to appoint a liquidator and ordered that instead the dissolution take effect in accordance with the draft Order of Court prepared by the representors, namely that the Representor Companies be dissolved once the Act of Court is registered.