

Neutral Citation Number: [2022] EWHC 692 (Ch)

Case No: CR-2022-000163

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
INSOLVENCY AND COMPANIES LIST

7 Rolls Buildings
Fetter Lane
London
EC4A 1NL
Remote Hearing
Tuesday, 8 March 2022

BEFORE:
INSOLVENCY AND COMPANIES COURT JUDGE JONES

BETWEEN:

QUARTERMAIN LTD

Applicant

- and -

BLACKMORE GLOBAL PCC LTD

Respondent

MS H PUGH appeared on behalf of the Applicant
The Respondent did not appear and was not represented

JUDGMENT
(Approved)

Digital Transcription by Epiq Europe Ltd,
Unit 1 Blenheim Court, Beaufort Business Park, Bristol, BS32 4NE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

INSOLVENCY AND COMPANIES COURT JUDGE JONES:

1. I have before me an application by the petitioner that seeks permission from the court to serve the respondent company out of the jurisdiction in the Isle of Man. It also asks for an alternative method of service in addition to that service, namely by first class post to 15 Stratton Street, Mayfair, London W1. That being a place identified as a location where the company's business has in the past (at least) been carried on.
2. The winding up petition was presented on 21 January this year. It relies in the first instance upon unpaid debts totalling in the region of £149,000 owed by the respondent, a company incorporated on 27 September 2013 in the Isle of Man. The alternative basis relied upon is the just and equitable ground, which I will mention in a moment but need not deal with in any detail for reasons which will become apparent.
3. The company is not registered as an overseas company under the 2006 Companies Act and, as a result, there is no address for service at Companies House. The evidence in support can be found in the witness statement of Mr Harrison.
4. This is an application which is necessarily made without attendance of the other side. I have read the witness statement in support as a whole. I start by noting paragraphs 6 to 8 which set out the background facts. The following paragraphs contain evidence which in my judgment clearly establishes the existence of the debt and provide no indication of any grounds of dispute from the respondent company.
5. In addition, a statutory demand was served on 6 December 2021 and there has been no response. The deemed inability to pay debts as

they fall due provision of the Insolvency Act, section 123(1)(a), therefore applies.

6. It is in those circumstances that I will not address in any detail the alternative ground. I say that without suggesting or indicating that I have any concerns about the merits of the alternative ground for the purpose of this application. That is because the evidence raises serious concerns over the use of assets provided to this company for the purposes of investment both by the petitioning creditor and others. The concerns include the danger of misappropriation and/or the intermingling of funds. The latter problem apparently being connected, at least in part, with an entity called “the Swan Group”. I need not address this ground further however, and I will leave it there. That is because the first ground is sufficient. Nevertheless, it is important to bear in mind that this is a situation where the court may consider that the investigatory powers of a compulsory liquidation in the hands of a liquidator are required.
7. The evidence also establishes (and I have in mind in particular paragraphs 21 to 25, then 42 and then paragraphs 35 to 36 and 38) that there has been business carried out within this jurisdiction by the respondent. In addition that there is good cause to believe that there are assets within the jurisdiction. As a result that there is cause for the court to decide to wind up the company. I have in mind in particular within the evidence, the references to the HSBC bank account and to the investments in English companies.
8. Paragraphs 26 to 30 and 43 to 44 of the evidence in support also deal with the residential addresses for the directors, again supporting the proposition that business has been carried out within this jurisdiction. Indeed, potentially the respondent’s incorporation in the Isle of Man and the fact that its registered office is there had and has nothing to do with where its business would be and was conducted.

9. That summary of the evidence forms the background to the answer to the first question which I have to address. Namely, whether permission should be granted to serve out of the jurisdiction at the registered office in the Isle of Man pursuant to schedule 4 of the Insolvency Rules 2016 and in accordance with those Rules, pursuant to the application of CPR Part 6 as prescribed.
10. For the purposes of Part 6, there is no doubt that a gateway exists. In the context of merits, I will address the position from the perspective of the Companies Court deciding whether or not to exercise jurisdiction to wind up a company which is registered overseas. Applying that test, this is a petition which, on its face, together with the evidence in support, establishes that the company is unable to pay its debts as they fall due. The petitioner is a creditor who has standing to present this petition. In addition, the company may have ceased business for more than a year without its liquidation or any other proper steps having been taken to lead to its proper dissolution. In those circumstances, there is a strong prospect of a winding up order being made provided the court accepts jurisdiction in respect of this unregistered company.
11. In that regard and to identify the general approach to be adopted by this court, I have been referred to and have had regard to the case of ***Re Real Estate Development Co*** [1991] BCLC 210 amongst other cases. I have also been referred and had regard to the ***Insolvency (Amendment) (EU Exit) Regulations 2019*** (SI 2019/146). It seems to me absolutely clear that the evidence concerning the nature of the business, the fact that many investors were at all material times within this jurisdiction, the fact of the respondent company carrying on business within the jurisdiction, the fact that there is evidence that it is likely there may be assets in the jurisdiction and the fact that investigations may be required concerning the conduct of directors resident here, are all factors which lead to the conclusion that there

is good cause for it being probable on the current evidence that a winding up order not only is needed but will be effective and will be made.

12. I therefore with reference to the terminology within the CPR conclude that I have identified a strong, arguable case on the merits and a serious issue to be tried as to whether the court ought to exercise its jurisdiction.
13. The matter could end there. There is as such no specific need for alternative service, because the ordinary place to serve will be the registered office of the Isle of Man. Advice has been obtained from a lawyer in the Isle of Man that service will need to be through the Coroner of Middle in accordance with local law, but there is no suggestion that that will cause a difficulty or, to use the terms of the Insolvency Rules, be “impractical”.
14. The reason, however, for asking for an additional method of service in this jurisdiction is because it appears that the corporate agent in the Isle of Man has resigned, and it is the corporate agent's registered address which is the registered office of the company. That should not make a difference to valid service on the registered office, because that address remains the registered office. However, I agree that in the context summarised it is sensible to have an additional form of service. In the circumstances of the evidence, although there are question marks as to the continued use of the Mayfair address, it seems to me to be right and proper that it should be the additional address.
15. In reaching that decision I have questioned whether instead of the Mayfair office or in addition to it, there should also be service on one or other of the directors.

16. There is a question as to whether the directors shown on the register, a Mr Nunn and a Mr McCreesh, are still directors or whether they may have resigned. In any event, enquiries of Mr Nunn have not produced any information. As to Mr McCreesh, enquiries have led to correspondence in which he has observed that the company should be served at the registered office. Bearing that in mind and also his use, as appears within the exhibits, of letterheading of the company showing the Isle of Man registered office as its address towards the end of 2021, specifically 21 December 2021, I have decided that it is right and sufficient to serve only at the Mayfair address as an additional form of service.

17. I will therefore grant the relief that is sought. I should say that I do so in circumstances where I have read a detailed and very helpful skeleton argument from Ms Pugh, counsel on behalf of the petitioning creditor, and I have borne in mind not only the main body of that document but also the matters which she has identified within the context of matters needed to be disclosed pursuant to the duty to give full disclosure in the context of an application made without notice.

Order Accordingly

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE

Email: civil@epiqglobal.co.uk

This transcript has been approved by the Judge