



CIVIL APPEAL No. CL-AP 5/19
(From W 9/11)

IN THE COURT OF APPEAL
TURKS & CAICOS ISLANDS

IN THE MATTER OF OXFORD VENTURES LIMITED (IN EASTERN CARIBBEAN LIQUIDATION)

AND IN THE MATTER OF AN APPLICATION BY BRITISH CARIBBEAN BANK LIMITED ("THE APPLICANT") TO REVOKE THE RECOGNITION OF THE JOINT OFFICIAL LIQUIDATORS OF OXFORD VENTURES LIMITED

AND IN THE MATTER OF AN EX PARTE ORDER OF 23 NOVEMBER 2011 AS AMENDED BY AN ORDER OF 1 FEBRUARY 2012

B E T W E E N

BRITISH CARIBBEAN BANK LIMITED

Appellant

-and-

CHRISTOPHER JOHNSON AND JOHN GREENWOOD AS JOINT OFFICIAL LIQUIDATORS OF
OXFORD VENTURES LIMITED

Respondents

BEFORE: The Hon Mr. Justice Humphrey Stollmeyer, P
The Hon Mr. Justice Stanley John, JA
The Hon Mr. Justice Ian Winder, JA

APPEARANCES: Mr. Conrad Griffiths QC for the Appellants
Mr. Peter McKnight for the Respondents

DATE OF HEARING: 22 January, 2021
DATE DELIVERED: 29 January, 2021



J U D G M E N T

1. **WINDER JA:** This is an appeal of the decision of *Ramsay-Hale CJ* (the Chief Justice) dated 26 November 2019, with respect to the Appellant's application to revoke the recognition of the Joint

Official Liquidators (“JOLs”) of Oxford Ventures Limited (OVL). In the course of that application for revocation the Chief Justice determined two preliminary issues against the Appellant.

Background

2. OVL was incorporated in the British Virgin Islands (“BVI”). On 22 November 2010, OVL was placed in liquidation by the BVI Court. Under the winding up Order (“the BVI Order”) Mr. Hadley Chilton (who was a BVI based insolvency practitioner) (“Chilton”) and Mr. Christopher Johnson (who was not BVI based, but based in the Cayman Islands) (“Johnson”) were appointed joint official liquidators (“JOLs”) of OVL.
3. The BVI Order circumscribed the powers granted to the JOLs. Paragraph 3 and 4 of the BVI Order provided:
 - “3. (i)...
 - (iv) Power to commence, continue, discontinue or defend any action or other legal proceedings in the name and on behalf of the Company in the BVI or elsewhere.
4. The powers set out at paragraph 3 (i)-(v) shall be exercisable only with the sanction of the court. The Liquidator may exercise all other powers set out in paragraph 3 without the sanction of the court.”
4. On 23 November 2011, the TCI Court recognised the appointment of Chilton and Johnson as the JOLs of OVL in the TCI. No sanction of the BVI court was obtained prior to the commencement of the recognition proceedings as required by section 4 of the BVI Order. The 23 November 2011, Order (“the Recognition Order”) was subsequently amended on 1 February 2012, to limit the scope of the powers granted under the original order, to better accord with the terms of the BVI Order.
5. On 28 July 2018, Chilton was removed as a JOL of OVL and John J. Greenwood (Greenwood) was subsequently appointed by the BVI Court as a joint official liquidator with Johnson. On 20 March 2019, the Appellant applied to the Supreme Court seeking orders revoking the Recognition Order on the grounds that:
 - (i) the JOLs had never obtained permission from the BVI Court to apply for recognition in TCI.

- (ii) the JOLs had made applications before the TCI Supreme Court for which they had no sanction at all from the BVI Court;
 - (iii) the JOLs failed to inform the TCI Supreme Court of the removal of Mr. Hadley Chilton and of his replacement by the BVI Court by Mr. John Greenwood and Mr. Johnson in 2018 and the JOLs have never applied for Mr. Greenwood to be recognised by the TCI Supreme Court and so Mr. Greenwood has no authority or status in the TCI;
 - (iv) the conduct of the JOLs and in particular that of Mr. Johnson fell below the objective standards required of a liquidator as an officer of the Court; and
 - (v) the JOLs were not in compliance with the TCI statutory insolvency regimes under the Insolvency Ordinance.
6. Collateral proceedings had commenced in the BVI to terminate the OVL liquidation and/or the removal of Johnson. In the meantime, the Chief Justice agreed to hear the preliminary issues of:
- (1) Whether, in consequence of the commencement of the Insolvency Ordinance, which came into force on 1 January 2019 by Legal Notice 76 of 2018, the JOLs can no longer act as Insolvency Practitioners in the TCI as they are not licensed pursuant to section 11(2) of the Insolvency Ordinance.
 - (2) Whether the removal of Chilton as a Joint Official Liquidator of OVL and the subsequent appointment of Greenwood by the Eastern Caribbean Supreme Court on 28 July 2018, had the effect of terminating the recognition of either or both Johnson and Chilton as the Joint Official Liquidators under the Order of Recognition.
7. The Appellant's Notice of Appeal challenged both of the findings of the Chief Justice, however, prior to the hearing of the appeal, the Appellant abandoned the challenge to the Insolvency Ordinance.

The Decision of the Chief Justice

8. The reasons of the Chief Justice, with respect to the Appellant's complaint concerning joint office holders, may be found at paragraphs 28-34 of her written judgment. We set them out in full:

JOINT OFFICE HOLDERS

28. Mr. Griffiths submits that, in the circumstances where this Court recognised the appointment of Mr. Hadley Chilton and Mr. Christopher Johnson as Joint Liquidators, the

removal of Mr. Chilton as one of the JOLs in July 2018 had the effect of terminating the Recognition Order as a matter of law. He contends that where two persons have been appointed jointly to execute or perform an office, the removal of one of them means the survivor cannot act until the appointment of the successor has taken place.

29. In support of this submission, he relies on the authority of *R v Wake*, 27 8 EL & BL 382 where statute which permitted the appointment of two persons to "execute jointly" the office of Clerk in a district court was considered. The Court held that each clerk acted separately, executing such duties as ordered by the Court, and, that on the death or resignation of one, the other was not ousted but his duties suspended until a successor of the other was appointed.

30. In so holding, the Court distinguished *Wake's* case from the "general rule" laid down in Auditor Curie's case 11 Rep.2 b, to which Mr. Griffiths also referred the Court. In Curie's case, the Court was again concerned to construe a statute which provided "that two persons shall be one officer." The Court held in Curie's case, that the effect of the statutory provision was that the office could not be constituted by one person.

31. Mr. Griffiths extrapolates the ratio of the cases to the Order recognising the JOLs' appointment by the BVI Court and submits that where this Court has recognised two JOLs, the removal of one has the effect of terminating the Recognition Order.

32. Neither case establishes any general principle of law. Each turned on the construction of the statute under which persons were appointed to particular offices. Whether the effect of Mr. Chilton's removal would be to terminate Mr. Johnson's appointment as one of two liquidators by the BVI Court or suspend Mr. Johnson's power to act under the Order appointing him by the BVI Court likewise turns on the construction of the BVI Ordinance under which he was appointed, which is a matter of BVI law and for the BVI Court which appointed him.

33. It is clear that Mr. Chilton's removal did not terminate Mr. Johnson's appointment as JOL by the BVI Court and his appointment by the BVI Court continues to be recognised by this Court as a matter of comity. If he is acting in breach of his office, it is not readily apparent from the BVI Order appointing him, as an appointment as Joint Liquidator does not, without more, necessarily preclude him from acting separately.

34. I accept that an application ought to have been made to recognise Mr. Greenwood as the new JOL in Mr. Chilton's place so that he too could operate in the jurisdiction to identify and/or seize assets located within it, but the failure to do so does not, in my judgment, vitiate the grant of recognition of the BVI insolvency proceedings by this Court.

The Appeal

9. The grounds of appeal, identified in the Appellant's Notice of Intention to Appeal provided, in part that:

"4. At all times the BVI Court made a joint appointment, not two appointments of individual liquidators who may act separately and without reference to the other. Therefore, the removal of one JOL means the joint appointment must necessarily end and requires a new joint appointment. Whether that state of affairs is construed as a suspension or revocation matters not, no action can then be taken by the other JOL until the new appointment has been recognised.

5. The Applicant submits it is self-evident that the Learned Chief Justice erred in her conclusions when, at paragraph 34 of the Judgement, it was expressly accepted as follows:

"I accept that an application ought to have been made to recognise Mr. Greenwood as the new JOL in Mr. Chilton's place ... "

That is the very substance of the complaint made by the Appellant.

6. The current JOL's of OVL (Mr. Johnson and Mr. Greenwood) have not been recognised by the Turks and Caicos Supreme Court. Accordingly, the current JOLs of OVL cannot and should not act in this Jurisdiction until they have been recognised. Yet, they are doing just that and without lawful authority of either the BVI Court or the Turks and Caicos Court.

...

8. In holding that the failure to make an application for recognition of John J Greenwood as the new JOL of OVL in Hadley Chilton's place does not invalidate the grant of recognition of the BVI insolvency proceedings, the Learned Chief Justice failed to take sufficient account of the fact that the Supreme Court of the Turks and Caicos Islands was not informed of the fact that Mr. Chilton ceased to be a JOL of OVL by Order of the Eastern Caribbean Supreme Court of 28 July, 2018 and Mr. Johnson was appointed in his stead.

9. No sufficient consideration was given to the fact that both Christopher Johnson and John J. Greenwood have been acting in these proceedings jointly, which was confirmed by the attorney instructed on behalf of both JOLs of OVL and by the Notice of Acting. This position is further evidenced by the affidavit sworn by Mr. Greenwood in the proceedings before the Turks and Caicos Supreme Court filed on 21 May, 2019.

10. The Learned Chief Justice failed to take sufficient account of the fact that up to the date of the Judgment, Mr. Greenwood had not applied to the Supreme Court of the Turks and Caicos Islands for an order of recognition.

11. Further, the Learned Chief Justice failed to take account or recognise the undisputed fact that the JOLs of OVL have at all times been acting in this jurisdiction without the authority and permission of the Eastern Caribbean Supreme Court where leave is required under the terms of their appointment.”

Discussion

10. Recently, since the delivery of the judgment of the Chief Justice, the BVI Court, on 2 December 2020, has removed Johnson as a joint official liquidator and permitted Greenwood to continue as the sole official liquidator of OVL. The BVI Court continues to consider the issue of whether the liquidation in the BVI would be terminated. In the 2 December 2020, written judgment of **Wallbank Actg. J**, the BVI Court also ostensibly gave retrospective sanction to pursue proceedings in the TCI. We, therefore, consider that this appeal concerns a very narrow issue of law, of whether Johnson could have continued to act alone in the TCI notwithstanding the removal of Chilton and the absence of any recognition by the TCI Court concerning the change.

11. According to Mr. Griffiths QC, for the Appellant:

“21. No application for recognition of this change [in JOLs] or for the recognition of the new joint appointment under the BVI Order of July 2018 appointing Mr. Johnson and Mr. Greenwood as new JOLs of OVL has ever been made to the TCI Supreme Court.

22. The office of liquidator is a personal appointment to an office conferred by the relevant supervisory court (here, the BVI Court) by which the office holder was appointed. However, the

act of recognition is an act of the TCI Court. The First Recognition Order simply recognises the appointment of Mr. Chilton and Mr. Johnson which is now entirely redundant.”

12. We consider that there is some merit in Mr. Griffiths QC’s submissions.

13. Paragraph 1 of the Recognition Order provided that:

“[T]he Order of 22 November, 2010 of the High Court of Justice of the Eastern Caribbean Supreme Court (“the BVI Order”) appointing Mr. Hadley J. Chilton **and** Mr. Christopher D. Johnson as **Joint** Liquidators of the Company be recognised by this Court.”

By recognizing the Order of the BVI Court, the TCI Court did not appoint Messrs. Johnson and Chilton to the office of joint official liquidators, it merely recognised that they were so appointed by the BVI Court and permitted them to function as such in the TCI.

14. In the proceedings before us, as well as in the Court below, the Appellant relied upon the decision in ***The Queen v. William Wake*** 8EL & BL. 397. In ***Wake***, the English Court held that where one of two, appointed “to execute jointly the office of Clerk” to a county court, dies, the survivor continues to hold the office; though he cannot act till a successor to the deceased person be appointed. The Chief Justice sought to distinguish ***Wake*** on the basis that it concerned the construction of a statute and she considered that it did not lay down any general principles of law. Mr. McKnight, on behalf of the Respondents, sought to further diminish the effect of ***Wake*** on account of its age (164 years old). Mr. McKnight also contends that ***Wake*** should be distinguished because it was not an insolvency case. No authorities however, have been advanced by the Respondents in support of their case.

15. Respectfully, we consider that whilst the Court in ***Wake*** did consider the appointment of the Clerk in the statutory context, the reasoning of the court, albeit of long standing, is nonetheless instructive. According to ***Lord Campbell CJ*** (with whom Justices Coleridge, Wightman and Earle agreed) at page 391:

“I am of opinion that this was intended: not, indeed, that the survivor of two appointees should have the whole office; but that, after the death of one, the other should continue to hold, not acting till a successor to the deceased party should be appointed. There can be no

doubt that, in cases where one person only is appointed to execute the office of clerk for the district, he holds during good behaviour. ... The two are to act: when one dies, the survivor is not ousted, and does not cease to be clerk: but he cannot act till the successor to the deceased person is appointed.

Further, per **Earle J** at page 395:

The question before us is, whether, when two persons are appointed to execute jointly the office of clerk of a district, the death of one vacates the office of the other. In Auditor Cule's Case (11 Rep. 2 b.) it is laid down that, where two are appointed jointly to a judicial office, the death of one does vacate the office of the other. But I am of opinion that there is no analogy between the judicial office there spoken of and the duties to be executed by the clerks in the present case. When two are appointed to be jointly a judge, there the judgment which they are to give is the judgment of both: so that, if one dies, the appointment is wholly at an end. If two arbitrators be appointed, with power to appoint an [396] umpire, there it is clear beyond doubt that the death of one arbitrator puts an end to the authority of both. But such cases have no analogy with the present case. Here each clerk, as my brother Coleridge has pointed out, is to act separately: the statute enables the court to assign separate duties and separate emoluments: and the case contemplated is that of a populous district where more than one officer will be required to perform separate duties.

16. The removal of Chilton on 28 October 2018, as one of the joint official liquidators ended the joint appointment under the BVI Order. Chilton could no longer act as one of the joint liquidators whether in the BVI or in the TCI, notwithstanding his earlier recognition by the TCI Court. Johnson could not act jointly, in the TCI, with Greenwood until that appointment was recognised in the TCI and no application was ever made for such recognition. We therefore accepted the submission of the Appellant that the effect of the removal of Mr. Hadley Chilton in 2018 was to terminate the joint appointment under the BVI Order and thereby the recognition under Recognition Order.
17. We are also satisfied that Johnson could not act on his own, following the removal of Chilton, as the recognition was given to him **and Chilton** as joint official liquidators. We are unable to reconcile the statement of the Chief Justice at paragraph 33 of her judgment where she stated, “*an appointment*

as Joint Liquidator does not, without more, necessarily preclude him from acting separately". The terms of the recognition, in keeping with the clear language of the BVI Order, was a **joint** appointment, not a **joint and several** appointment. The appointment was given to **Johnson and Chilton** not to **Johnson and/or Chilton**.

18. At paragraph 34 of her judgement the Chief Justice says:

34. I accept that an application ought to have been made to recognise Mr. Greenwood as the new JOL in Mr. Chilton's place so that he too could operate in the jurisdiction to identify and/or seize assets located within it, but the failure to do so does not, in my judgment, vitiate the grant of recognition of the BVI insolvency proceedings by this Court.

We cannot reconcile the acceptance of the Chief Justice that Greenwood required recognition to act in the TCI, with her conclusion that Johnson (as joint holder of the office of official liquidator) could act on his own to identify and/or seize assets located in the TCI. The joint office – Johnson/Chilton – came to an end on 28 October 2018, and a new office – Johnson/Greenwood – was immediately created. Whilst Johnson continued seamlessly to be a joint official liquidator in the BVI, during the relevant period, once the joint appointment between he and Chilton ended an approach to the TCI Court was required for him to continue to act in the TCI, in the new office Johnson/Greenwood. Johnson could not begin to act alone in the TCI, as Mr. Griffith puts it, under the cloak of an apparent authority in the Recognition Order. Recognition was not given to the BVI insolvency proceedings, as the Chief Justice indicated in her judgment. The recognition had been given to Chilton and Johnson to act jointly, in their personal capacity as JOLs.

Disposition

19. In the circumstances, therefore, we allow the appeal and grant the order sought by the Appellant in its notice, namely:

The removal of Hadley Chilton as a Joint Official Liquidator of Oxford Ventures Limited ("JOL of OVL") and the subsequent appointment of Mr. John Greenwood by the Eastern Caribbean Supreme Court on 28 July, 2018 did have the effect of terminating or suspending the recognition of Christopher Johnson (and Hadley Chilton) as JOLs of OVL under the Turks

and Caicos Order of Recognition pending further Order of the Eastern Caribbean Supreme Court and further recognition by the Supreme Court of the Turks and Caicos Islands.

20. We award the Appellants their reasonable costs in the appeal, such costs to be taxed if not agreed. We will order, however, that each party should bear their own costs in the Court below.

Dated this 29 January, 2021

/s/ Ian Winder
Justice of Appeal

I agree

/s/ Humphrey Stollmeyer
President

I also agree

/s/ Stanley John
Justice of Appeal

