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Case Nos: CR-2021-MAN-000085
CR-2021-MAN-000087
CR-2021-MAN-000088
CR-2021-MAN-000100

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
INSOLVENCY & COMPANIES LIST (ChD)

Manchester Civil Justice Centre
1 Bridge Street West
Manchester M60 9DJ

Date: Tuesday,1 June 2021

Before:

His Honour Judge Hodge QC
Sitting as a Judge of the High Court

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In the matter of:

Harrington & Charles Trading Company Limited
Rose Mountain LLP
Bramhall & Lonsdale Limited
Connecor (UK) Limited

Between:

(1) Standard Chartered Bank
(2) Standard Chartered Bank India

Claimants

- and -

Registrar of Companies

Defendant

Ms Catherine Addy QC and **Mr William Day** (instructed by **Eversheds Sutherland (International) LLP**) appeared for the **Claimants**

The Defendant did not appear and was not represented

Hearing date: **1st June 2021**

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APPROVED JUDGMENT

JUDGE HODGE QC:

1. This is the approved version of my extemporary judgment delivered on 1 June 2021 on the hearing (conducted remotely by Microsoft Teams) of four applications brought by way of Part 8 claim forms, in three cases issued on 12 February 2021 and in the fourth case issued on 18 February 2021. This text is to be treated as the only approved version of my judgment and it supersedes any other transcript of my extemporary judgment.

2. The applications that are before me are to restore three limited companies and one limited liability partnership to the Register of Companies pursuant to section 1029 of the Companies Act 2006 and to appoint new liquidators in respect of those entities pursuant to section 108 of the Insolvency Act 1986. In the case of the limited liability partnership, there are specific provisions in the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 and the Limited Liability Partnership Regulations 2001 which apply (as modified by those Regulations) the provisions of the Companies Act 2006 and the Insolvency Act 1986 to the position of a limited liability partnership. In the interests of simplicity, in this judgment I refer only to the provisions of the Companies Act 2006 and the Insolvency Act 1986.

3. The three companies and the limited liability partnership are as follows:

   (1) Harrington & Charles Trading Company Limited, which entered into members' voluntary liquidation on 26 September 2016 and which was dissolved on 19 May 2019 (Case number CR-2021-MAN-000085);

   (2) Rose Mountain LLP, which entered into members' voluntary liquidation on 22 August 2017 and was dissolved on 10 March 2020 (Case number CR-2021-MAN-000087);

(3) Bramhall & Lonsdale Limited, which entered into members' voluntary liquidation on 9 December 2016 and was dissolved on 25 May 2019 (Case number CR-2021-MAN-000088); and

(4) Connecor (UK) Limited, which entered into members' voluntary liquidation on 20 July 2018 and was dissolved on 2 April 2020 (Case number CR-2021-MAN-000100).

4. In each case, the applicants for restoration are Standard Chartered Bank and Standard Chartered Bank India. They are represented by Ms Catherine Addy QC, leading Mr William Day (of counsel), instructed by Eversheds Sutherland (International) LLP's Manchester office. There is no one who appears for the sole respondent, which in each case is the Registrar of Companies; and no other party has been formally joined to the restoration applications or has appeared before me at this remote hearing.

5. The evidence in support of the applications is contained in three witness statements. The first, and principal, witness statement is that of Mr Matthew Damian Brown dated 12 February 2021. He is a solicitor and the Head of Shared Investigative Services for Europe, America, Africa, and the Middle East for Standard Chartered Bank. His witness statement extends to some 76 pages; and the exhibits to that witness statement, MB 1 and MB 2, extend to over 3,200 pages. The other two witness statements are from Mr Thomas Paul Parry, a solicitor and Senior Associate with Eversheds Sutherland; they are dated 25 May and 28 May 2021 and there are two exhibits TPP 1 and TPP 2.

6. The restoration applications have been the subject of a case management order made by District Judge Carter on 31 March 2021.

7. Since all of the applications present the court with the same factual and legal issues for hearing and determination, they were all listed for a one-day consolidated hearing today, 1 June 2021, at 11.00 am, for a hearing of up to one day (inclusive of an hour's reading time between 10.00 am and 11.00 am this morning).

8. When I read the skeleton argument from Ms Addy and Mr Day it became apparent that they had estimated the reading time at three hours, and I therefore undertook three hours' reading this morning rather than the one hour provided for in the court's order and the hearing notice. In the course of that pre-reading, I read the whole of Mr Brown's witness statement in detail, as I had been invited to do by Ms Addy; and I also read the whole of the two witness statements of Mr Parry. In addition, I read the detailed skeleton argument for the applicants, which extends to some 35 pages.

9. I have been unable to download the extensive exhibits to Mr Brown's witness statement. I twice attempted to do so on Friday afternoon from the solicitors' file transfer platform but on each occasion I received the response that I was using an invalid user name or password, whether I typed it in manually or copied and pasted it in from the letter filed by the solicitors which had contained it. I made a third, and equally unsuccessful, attempt to do so earlier this morning. I had communicated my difficulties in accessing the supporting evidence in three emails to the court office during the course of the afternoon of Friday 28 May 2021. The court office communicated my difficulties to Eversheds Sutherland in an email which was sent at about 8.30 on the evening of Sunday 30 May. Eversheds Sutherland responded in an email at about 1.20 yesterday afternoon, the Monday Bank Holiday (31 May), which was forwarded to me at about 3.20 pm. That attempted to provide an alternative means of downloading the extensive exhibit by way of a Dropbox. I did attempt to download the file twice yesterday evening but on each occasion the

download failed and I was informed that all that had been produced, notwithstanding about 30 minutes' download time on each occasion, was a corrupted file. As a result, I have been unable to read the documents exhibited to Mr Brown's witness statement; but I am satisfied that his witness statement contains a full, and apparently accurate, description of the various documents; and I have been further assisted by the terms of Ms Addy's and Mr Day's written skeleton argument.

10. Ms Addy has addressed me, both this morning and earlier this afternoon, for about two and a half hours in total. In doing so, she has addressed me, in particular, in relation to full and frank disclosure in these applications.

Background

11. The background to these applications is that all four of the restoration entities appear to have been under common control and/or ownership. The last recorded sole shareholder of the three companies is a Cypriot company called Hansa Mercator Limited ('**Hansa Mercator**'); and the recorded members of the limited liability partnership were two companies (Holdwave Trading Limited and Oceanroad Global Services Limited) that were also subsidiaries of Hansa Mercator during the relevant period. The applicants' evidence is that Hansa Mercator appears to be the transactional services unit of a business known as Amicorp, which itself provides a wide range of entity administration services. As set out in Mr Brown's witness statement, publicly available information suggests that the directors of the restoration entities were employees of, or otherwise linked to, Hansa Mercator and/or Amicorp

12. It is the applicants' case that the four restoration entities (together with other entities) have all been used to launder the proceeds of a very substantial international fraud before each of them was placed into members' voluntary liquidation and then subsequently dissolved.

13. The ultimate victims of such fraud are said to have included the first applicant, Standard Chartered Bank, and members of a consortium of other banks led by the second applicant, Standard Chartered Bank India, which is a branch of Standard Chartered Bank established in India as a foreign company under the Indian Companies Act 2021.

14. As a matter of English company law, Standard Chartered Bank India is not a legal entity separate from Standard Chartered Bank. However, because these cases involve standby letters of credit governed by global market standard terms (International Standby Practices 98), which include provisions (at rule 2.02) for branches to be treated as a separate person, the applicants have taken the sensible and pragmatic decision to bring these applications in the names of each of Standard Chartered Bank and Standard Chartered Bank India.

15. In outline, members of the consortium led by Standard Chartered Bank India issued standby letters of credit to secure the repayment obligations of an Indian gold bullion trader and jewellery manufacturer first called Su-Raj Diamonds & Jewellery Limited, and later called Winsome Diamonds and Jewellery Limited ('**Winsome**'). Winsome owed those repayment obligations to Standard Chartered Bank under a precious metals facility, as well as to other bullion banks under similar facilities.

16. During the course of March and April 2013, Winsome defaulted on amounts totalling approximately US $774 million. That, in turn, led to a call on the various standby letters of credit. When the consortium then sought to recover from Winsome, it found few assets against which the consortium was able to enforce. Subject to very limited recoveries, Standard Chartered Bank India's share of the consortium losses is in excess of US $70 million. It is that loss which the

applicants seek to recover, as a first step through the restoration to the Register of the four dissolved entities which are the subject of the present applications.

17. The ultimate perpetrator, and the beneficiary, of the fraud is believed to have been a Mr Jatin Mehta. He was on Winsome's board, first as its managing director, and then as its non-executive chairman, until late in 2012. It is believed, however, that even after formally resigning from the board of Winsome Mr Mehta nevertheless remained in effective control of that entity. It is believed by the applicants that before defaulting to Standard Chartered Bank under the precious metals facility, Mr Mehta and/or his associates had directed the laundering of its proceeds from Winsome in India through up to 13 companies in the United Arab Emirates ('t**he UAE**') which purported to carry on gold and jewellery distribution businesses, and then through seven entities in the United Kingdom and Ireland, including the four restoration entities, using purported derivative transactions, and then through further persons or entities as yet unknown. The present claims for restoration of the four entities to the Register are thus an important part of a wider global asset-tracing exercise.

The applications

18. Ms Addy emphasises that these present restoration applications do not require the court to embark upon any mini-trial to determine conclusively the allegations against Winsome, Mr Mehta, and the others who are said to have been involved in the alleged fraud. Whilst the applicants maintain that they are creditors of the four restoration entities pursuant to section 1029 (2) (f) of the Companies Act 2006, the court only has to be satisfied that the applicants have a credible potential legal claim against each of the restoration entities. Ms Addy referred me to observations of Hoffmann LJ in *Stanhope Pension Trust Ltd v Registrar of Companies* [1994] BCC 84 at 90:

> "The making of the order does not determine whether the applicant has a claim against the company or the company has a claim against a third party. As I have already said, all that is required is that the claim should not be 'merely shadowy'. It therefore seems to me that a third party who merely wants to say that the applicant has no claim against the company or that the proceedings which the revived company proposes to bring against him have no prospect of success should not be entitled to intervene in the application."

19. The applicants have also placed reliance upon section 1029 (2) (i) of the Companies Act 2006 on the basis that they are creditors of each of the restoration entities, and also upon the general jurisdictional threshold that they are persons who appear to the court to have an interest in the matter. However, Ms Addy accepted that if the applicants cannot establish that they have a potential legal claim against each of the restoration companies, then the other potential jurisdictional thresholds cannot be satisfied either. I therefore propose to focus upon whether the applicant banks are persons with a potential legal claim against the dissolved entities.

20. If the applicants satisfy that jurisdictional threshold, which requires the court to be satisfied that the applicants' claims are more than merely shadowy, and instead have a real prospect of success, then the applicants rely upon the terms of section 1031 (1) (c) of the Companies Act 2006 for the court's power to order the restoration of each entity to the Register, on the basis that the court should consider it to be just to do so. Ms Addy drew my attention to *Re Infund LLP* [2018] EWHC 1306 (Ch), [2018] Bus LR 1863, in which Henry Carr J, at [172], identified the principles which govern the exercise of the court's discretion to restore a dissolved entity to the Registrar. Those relevant to the present applications are:

(1) If one or more of the gateways for restoration are satisfied, absent special circumstances restoration should follow. Exercising the discretion against restoration should be the exception, and not the rule.

(2) The court must consider the interests of third parties who may be affected by the restoration but it should only take into account prejudice that is directly attributable to the restoration, rather than to any other circumstances.

(3) In deciding whether it is just to restore a dissolved entity to the Register, the court must have regard to all the circumstances of the case, and it is not limited to considering the position at a particular date. Relevant circumstances can include the basis for the removal of the entity from the Register, the reasons for restoration and all other intervening events. The weight to be given to any fact or matter is for the judge to decide.

21. In each of the present cases, the application to the court for the restoration of the relevant entity to the Register is being made within the period of six years from the date of that entity's dissolution, and therefore there is no time bar which applies in the present cases to the restoration applications. The applications are brought within the time limit provided by section 1030 (4) of the Companies Act 2006.

22. If the court orders the restoration of the four entities to the Register, the applicants seek the appointment of independent liquidators who, in the first instance, will determine the validity of the applicants' claims against each of the restoration entities. The proposed independent liquidators, to be appointed pursuant to section 108 of the Insolvency Act 1986, are Mr Peter Hart and Mr James Sleight of PKF Geoffrey Martin. Both are experienced insolvency practitioners in the field of the realisation of assets in cases similar to the present. If they accept the applicant banks' claims, then the entities will be moved into creditors' voluntary liquidation; and insolvency

practitioners at Grant Thornton, who are already engaged on other parts of the asset-tracing exercise, will be nominated by the applicant banks, in their capacity as creditors, for appointment as replacement liquidators. Those insolvency office-holders will then seek to access the respective entities' books and records and use their statutory information-gathering powers to trace the proceeds into companies further up the line, presently unknown, and, so it is hoped, bring actions to recover funds for the benefit of the applicant banks and any other creditors of the four restored entities, which may include other members of the consortium. Conversely, if the applicants' claims are rejected by the independent liquidators, then, subject to any successful appeal against such decisions by the applicants in accordance with the Insolvency Rules, the four entities will be returned to dissolution.

The basis for the applications

23. In their written skeleton argument, the applicants' counsel address the evidence in respect of the default by Winsome and what is said to be the laundering of its proceeds through the restoration entities. The skeleton then addresses the applicants' claims against the restoration entities; it addresses various procedural matters, including the proposed appointments of Mr Hart and Mr Sleight; and finally it addresses the applicants' obligations of full and frank disclosure.

24. The factual background is related in detail in the extensive witness evidence of Mr Brown. He addresses the applicants' claims against the four entities in section F of his witness statement. At the time of Winsome's default, it told the applicants that this was due to the default of UAE distributor companies on the credit terms that Winsome had extended to them on sales of precious metal and jewellery. The UAE distributor companies in turn claimed that they had defaulted on their obligations to Winsome because of foreign exchange and commodity losses of nearly US $1 billion with various financial institutions and institutional brokers. According to Mr Brown's

evidence, in July 2015 Winsome had sent Standard Chartered Bank India a USB drive containing documents which, for the first time, identified the counterparties to the derivative transactions as including the restoration entities. The documents included evidence of substantial payments to the restoration entities as well as some (but not all) of the contractual documentation for those transactions.

25. At paragraphs 154 to 162 of his witness statement Mr Brown addresses the lack of any commercial rationale for the transactions between the UAE distributor companies and the four restoration entities. In summary, the applicants' case is that:

(1) Derivatives trading was wholly outside the normal course of business of each of the restoration entities stated in their Companies House filings. It was also outside the course of the stated businesses of the UAE distributor companies.

(2) The payment flow appears to have been predetermined and to have proceeded only one way, from the UAE distributor companies to the restoration entities. No payments were ever made in the opposite direction; nor (given the multi-million US $ positions taken) could the restoration entities have ever made such payments given their very modest asset positions.

(3) The restoration entities have passed on all of the funds received from the UAE distributor companies to entities currently unknown and they have been put into liquidation with minimal assets. The effect of these actions is that the moneys have disappeared with no visible trace left for the outside world to follow.

(4) None of the statutory accounts reflected the payments received by the restoration entities. Indeed, for the critical years, the accounts were not audited, unlike the position in preceding and subsequent years.

(5) It can be inferred that all of these facts were known to the individuals controlling the restoration entities at the relevant time.

26. At paragraphs 163 to 170 of his witness statement, Mr Brown addresses the applicants' proposed causes of action against the four restoration entities. The potential causes of action are said to involve allegations of breaches of constructive trust and knowing receipt, dishonest assistance, and an unlawful means conspiracy. In her submissions, Ms Addy has split these causes of action into recipient liability claims and assistance liability claims.

27. At section G of his witness statement, Mr Brown addresses the reasons for the restoration of the four entities to the Register. In section H, and in the two witness statements from Mr Parry, the applicants address compliance with the applicable Practice Note on Company Restorations. Section J of Mr Brown's witness statement addresses the issue of full and frank disclosure at paragraph 180. This is divided into a number of discrete sub-paragraphs which seek to identify, and address, all possible representations that might have been made had anyone appeared to oppose the restoration of any of the four entities to the Register.

28. I am satisfied on the evidence and for the reasons advanced by Ms Addy and Mr Day, both in their written skeleton argument and in Ms Addy's oral submissions to the court, that the banks have demonstrated claims that are far from shadowy, and which have real prospects of success. Ms Addy has referred me to the relevant authorities on each cause of action; but it is unnecessary for me to set out the applicable legal principles in detail in this judgment.

29. Essentially, the basis of the applicants' claims is that at the time of the various drawdowns under Winsome's precious metals facilities, there was no intention on Winsome's part ever to repay the loans. Inevitably, there is no direct evidence to this effect; but that is said to be the clear inference which should be drawn from what actually happened. I am satisfied on the evidence that the

banks have established a claim in that regard which is far from shadowy, but rather one that has a real prospect of success. On that basis, on the present state of the authorities addressed in the skeleton argument, and developed by Ms Addy in her oral submissions, that state of affairs gave rise to a constructive trust of the monies advanced pursuant to the facility. In particular, Ms Addy cites observations by Lord Browne-Wilkinson in *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] AC 669 (HL) at 716 C-D that "… when property is obtained by fraud equity imposes a constructive trust on the fraudulent recipient: the property is recoverable and traceable in equity."

30. In the course of her oral submissions Ms Addy returned again and again to the recent decision of His Honour Judge Waksman QC, sitting as a judge of the Commercial Court, in the case of *CMOC Sales & Marketing Limited v Persons Unknown* [2018] EWHC 2230 (Comm). That sets out the law in relation to claims in breach of constructive trust, knowing receipt and dishonest assistance, and unlawful means conspiracy, all in the context of a money laundering operation. On the basis that the applicants have a credible claim to a constructive trust in relation to the monies received by Winsome, that authority confirms that that provides a sufficient basis for knowing receipt and constructive trust claims against the restoration entities. I am satisfied that these claims have a real prospect of success because the restoration entities cannot have received the monies in good conscience, given the nature of the restoration entities, their business, and the circumstances in which the monies were received and then applied.

31. Ms Addy has taken me through the necessary ingredients of all of the claims, including a claim in unlawful means conspiracy; and I am satisfied, for the reasons that she has given, that there is a far from shadowy claim which has real prospects of success.

32. I am satisfied on the present state of the authorities, and consistently also with principle, that it is not necessary that the applicants should be able to demonstrate that the restoration entities should have known the precise identity of the banks who were the actual victims of the fraud perpetrated upon them by Winsome. It is sufficient to know that there was a victim, without knowing its precise identity. It is sufficient to establish that it is unconscionable for any of the restoration entities to have retained assets derived from Winsome because they must have known that there was a fraud, even if they did not know the precise identity of the party defrauded. As the Singapore High Court (Ang Saw Ean J) has said in *The Dolphina* [2011] SGHC 273, [2012] 1 Lloyd's Rep 304 at [282] (which was cited with approval by Judge Waksman QC in the *CMOC* case at [120]): "A conspirator need not know all of the details of the plot so long as he is aware of the common objective and what his role in bringing it about involves". I agree.

33. I am therefore satisfied on the evidence that the applicants have demonstrated that they have the necessary standing to make these applications because they are persons with a potential legal claim against each of the restoration entities; and also that it would be just to restore each of the four entities to the Register of Companies to enable such claims to be pursued.

Notice of the applications

34. I am satisfied that all of the procedural requirements identified in the applicable Companies Court Practice Notice relating to the restoration of companies to the Register have been satisfied. There are the necessary consents from the Treasury Solicitor in relation to any claim by the Crown to bona vacantia, and also the necessary consents from the Registrar of Companies.

35. I am satisfied that the former liquidators of each of the four restoration entities have been fully and properly notified of these claims and have raised no objection to them. In the case of the

limited liability partnership, both of the last known members (Holdwave and Oceanroad) are now in creditors' voluntary liquidation, with insolvency practitioners from Grant Thornton appointed as their office-holders. The applicants propose that those same insolvency practitioners should be appointed as liquidators of the restoration entities if the court-appointed insolvency office-holders decide in the future to move them into creditors' voluntary liquidation, and there is therefore no objection to these applications from either of those entities.

36. At paragraph 180.2 of his witness statement, it had originally been envisaged by Mr Brown that the former liquidators should notify the last-known shareholder of each of the three companies of the present application. That has not been done. The former liquidators have explained that on their reading of the relevant sub-paragraph of Mr Brown's witness statement, they had understood that the applicants' solicitors would be making a further request for them to notify the former shareholder, Hansa Mercator. It was only last week (on 25 May) that the applicants discovered that that had not been done; and it was only late on the afternoon of 27 May by email, and early on the afternoon of 28 May by hard copy delivery, that Hansa Mercator in Cyprus was notified of the hearing today. No doubt as a result, there has been no appearance by that entity before me.

37. There is no formal requirement in the relevant 2012 Companies Court Practice Note for the shareholder or shareholders of a company in members' voluntary liquidation to be notified of a restoration application. However, I have been taken to observations of David Richards LJ (with the agreement of Newey and Floyd LJJ) in the recent case of *Fakhry v Pagden* [2020] EWCA Civ 1207, [2021] BCC 46, at [80] to the effect that on an application to restore to the Register a company in members' voluntary liquidation "… it was essential for the court to have considered whether and, if so, how the members should be consulted". In the particular circumstances of that case, David Richards LJ indicated that the wishes of the members of the companies in question

should have been ascertained before the court reached a final decision on the restoration application.

38. I accept Ms Addy's submission that this case is not analogous to the case of *Fakhry v Pagden*. In that case, the applicant on the restoration application was a minority shareholder who had wished the companies to continue in members' voluntary liquidation in order to bring claims for the benefit of the company's shareholders. Here, in each case the applicants are potential creditors, and not members, of the company; and they seek to restore the companies to the Register so that independent liquidators can consider the applicants' claims and whether to move the companies into creditors' voluntary liquidation. As Ms Addy put it in her oral submissions, in that case the issue was between the members themselves. Here, the restoration is being sought by an entity external to the membership of the company, in order to advance claims against the company, and not for the benefit of the shareholders themselves. In such circumstances, I see no reason for the court to consider the views of the member or members of the restoration entities. This is not an internal, but rather an external, matter.

39. I had indicated to Ms Addy that if I were concerned about the views of the last known shareholder, I could make an order with express provision for that shareholder to apply to have the order varied or set aside. Given the nature of an order for the restoration of a company to the Register, Ms Addy suggested that a better course would be simply to direct that the restoration order should not be filed at the Companies Registry until a period of time had elapsed; and also to direct that notice of the order should be given to the shareholder to enable it to make any application to vary the order before it was registered at Companies House. Given the view I have formed about the relevance of consulting the members of these entities, it does not seem to me to be necessary to include any such provision in the court's orders.

Conclusion

40. In summary, for the reasons that I have given, I am satisfied: first, that the applicant banks have the necessary standing to apply for the restoration of each of the four entities to the Register on the basis that they are persons with potential legal claims against each of the dissolved entities; second, that the claims for restoration have been brought within the period of six years from the date of dissolution of each of the relevant entities; and third, that it would be just to order the restoration of each of the four dissolved entities to the Register.

41. I am satisfied that all of the procedural pre-conditions have been addressed and satisfied. The views of the representatives of the last-known members of the limited liability partnership are known. I am satisfied that it is unnecessary, in the particular circumstances of the present case, to have regard to the views, which are not known, of the last-known shareholder of each of the three companies.

42. I am satisfied that through both Mr Brown's witness statement, and the applicants' written skeleton argument and Ms Addy's oral submissions, full and frank disclosure has been given of all possible points that might have been raised in opposition to these restoration applications.

43. In those circumstances, therefore, I will make orders in the terms sought, as they have been put before me, subject to the correction of the date of issue of the relevant claim forms which I pointed out at the start of the hearing.