

Richard Toone, Adrian Hyde and Adrian Rabet, of Begbies Traynor, joint administrators of Betindex Ltd ((in Administration)) v Index Labs Ltd ((in Administration))

Jurisdiction:	Jersey
Judge:	J. A. Clyde-Smith O.B.E., Jurats Blampied, Christensen
Judgment Date:	09 December 2021
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Court:	Royal Court

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Text

[2021] JRC 309

ROYAL COURT

(Samedi)

Before:

J. A. Clyde-Smith O.B.E., **Commissioner, and** Jurats Blampied **and** Christensen

In the Matter of Betindex Limited

And in the Matter of the Inherent Jurisdiction of the Court

Between

Richard Toone, Adrian Hyde and Adrian Rabet, of Begbies Traynor, joint administrators of
Betindex Limited (in administration)

Representors
and

Index Labs Limited (in administration)

First Respondent

Neil Kelly

Second Respondent

and

Members of the creditors' committee

Third Respondent

and

Nichola Marshall and Paula Lee, of Messrs Leigh Day

Fourth Respondent

and

Frank Brumby of Isadore Goldman

Fifth Respondent

and

The Jersey Gambling Commission

Sixth Respondent

and

The Gambling Commission of the United Kingdom

Seventh Respondent

and

The Viscount

Eighth Respondent

and

The Jersey Financial Services Commission

Ninth Respondent

Advocate R. O. B. Gardner for the Representor.

Advocate O. J. Passmore for the First Respondent.

Authorities

Companies (Jersey) Law 1991.

Betindex Limited [\[2021\] JRC 077](#).

Trusts (Jersey) Law 1984.

In the matter of Pound World (Jersey) Limited [\[2009\] JRC 042](#).

Liquidation

THE COMMISSIONER:

- 1 On 5th November 2021, the Court ordered the just and equitable winding up of Betindex Limited (“Betindex”) pursuant to Article 155(1) of the Companies (Jersey) Law 1991 (“the Companies Law”) and appointed Mr Adrian Rabet and Mr Richard Toone of Begbies Traynor as Joint Liquidators. An issue arose as to the identity of the liquidators.
- 2 Betindex is a Jersey incorporated company and operated an online gambling platform trading extensively in the U.K. market. The platform was designed to make betting on football resemble stock market speculation. Customers, known as “Traders”, would pay funds into their Football Index account, and those funds could then be used to place bets on professional footballers. The bets were placed on individual named footballers and were referred to as “shares” in the named footballer player (with multiple shares being issued in respect of any given player). Each share was intended to last three years, and the value of the share could rise and fall, depending on trading activity in relation to any given footballer and/or their performance on and off the pitch as tracked by the platform. “Dividends” (effectively winnings on bets placed) could be paid, linked to the performance of the footballer on which the bet was placed, and that footballer’s media activity.
- 3 A Trader could become the owner of a share by purchasing an existing share from another Trader on the platform or by purchasing a newly issued share directly from Betindex. Traders sold shares to other Traders; the purchaser putting in a bid price matching the seller’s asking price for a specific share or quantity of shares. At the point of sale, the original three-year bet was cancelled and a new three-year bet was issued to the purchasing Trader.
- 4 Subject to some exceptions, Betindex charged a 2% commission on each such sale, and a 2% commission on purchases made through placing a “bid”. In addition, Betindex could earn revenue from issuing minted shares to the market. The price of shares was contingent on the expected value of the dividends which the owner of the share might receive during the lifetime of the share.
- 5 All of the intellectual property in relation to the platform is owned by the parent company of Betindex, namely Index Labs Limited (“Index Labs”), a company incorporated in England and Wales, which it licensed to Betindex. Index Labs also serviced and maintained the platform.

- 6 Betindex relied on high prices and high trading volumes of shares in order to generate commissions. On 13th March 2020, the Premier League announced that matches were to be suspended as a result of the ongoing COVID 19 pandemic, which adversely affected Betindex's financial position, since a lack of footballing activity reduced the chances of dividends being declared and reduced the demand for shares. During the following twelve months, Betindex implemented a number of changes to the operation of the platform, such as changes in dividend payments, and attempted unsuccessfully to raise significant further funds. However, as a result of falling prices, reduced Trader confidence, panic selling and negative press coverage, the platform and the gambling licences in the UK and Jersey were suspended on 11th March 2021.
- 7 The directors took the view that Betindex could be rescued with additional funding in conjunction with a company voluntary arrangement (CVA), and on 18th March 2021, on its application, the Royal Court issued a letter of request to the English High Court for Betindex to be placed into administration, a procedure not possible under Jersey law. As the Deputy Bailiff explained in his judgment (*Betindex Limited* [\[2021\] JRC 077](#)), at paragraph 11:

“11 The strategy behind the CVA is to agree the terms of a restructuring of the platform which will involve the customers and the Company's parent company and sole shareholder Index Labs Limited which is a UK private company. The directors believe the Company can be rescued as a going concern and this will lead to a better recovery for the creditors than liquidation. Firstly, the underlying business model is attractive to customers and financially sustainable; secondly, the Company is presently still balance sheet solvent and, once creditors' claims are compromised, there may be assets with which to ‘relaunch’ the platform and the only realistic alternative to administration is for the Company to enter into an insolvency process under Jersey Law either by way of a creditors' winding up or by a declaration that the Company's property is en désastre. Both of these options are liquidation process, do not offer the prospect of rescuing the Company as a going concern and the return to creditors would be materially worse. The Company has engaged Begbies Traynor to support his application and the Company's request for appointment as joint administrators and it is their professional opinion that the entry of the Company into administration will be more beneficial for the Company a whole than compulsory liquidation in England or winding up or en désastre in Jersey.”

- 8 On 26th March 2021, the High Court made orders that Betindex be subject to an administration order under the Insolvency Act 1986 and appointed the Representatives as the joint administrators (“the Joint Administrators”). Their appointment was recognised by the Royal Court on 26th May 2021.
- 9 At the date of the appointment of the Joint Administrators, the assets of Betindex included a balance of £4.5 million held pursuant to an English law trust deed for the benefit of Traders,

of which there are approximately 150,000 Traders with positive balances in the trust account. On the 22nd June 2021 the Royal Court ordered the Viscount to pay these monies to the Joint Administrators.

- 10 The administration has not achieved its statutory purpose. The Joint Administrators, in conjunction with the directors of Index Labs, had sought funding from licensed gambling operators to take over the combined operations of the two companies, but without success. GDA Luma, a US Delaware investment vehicle specialising in distressed investments and with experience in the gambling sector, was introduced to Index Labs by the Joint Administrators in April 2021, and on 29th April 2021, entered into a facility agreement with Index Labs totalling £3.5 million, subject to maximum monthly drawdowns of £750,000. The purpose of the facility was for Index Labs to apply such funds towards the general working capital requirements of the group companies, including, but not limited to, the payment of wages and salaries owed to the employees. The facility was intended to provide sufficient time for GDA Luma to complete its inquiries and due diligence prior to committing further and potentially substantial funds to deliver the Betindex restructuring/relaunch strategy.
- 11 The first drawdown of £750,000 was made on 4th May 2021, but on 26th May 2021, GDA Luma issued a notice of facility default to Index Labs and at the same time indicated in writing to the Joint Administrators that it did not support the Betindex restructure/relaunch strategy, including the proposal for a CVA. With all the assets of Index Labs subject to security in favour of GDA Luma, Index Labs considered there was no reasonable prospect of attracting another funder/sponsor of the CVA. Furthermore, a dispute had arisen between the Joint Administrators and Index Labs in relation to the services provided by Index Labs and the relationship between the directors of Index Labs and the Joint Administrators had broken down. Index Labs is claiming some £707,270 for services provided to Betindex prior to it being placed in administration and some £1.3 million for services provided during the administration. On 2nd August 2021 Index Labs was itself placed into administration with principals from BDO being appointed joint administrators.
- 12 On 7th October 2021, the Joint Administrators filed an application before the Royal Court, seeking an order that Betindex be wound up on just and equitable grounds, listed to be heard on 5th November 2021. On the 26th October the Joint Administrators applied to the English High Court to end the administration of Betindex with a view to it being wound up.
- 13 On 1st November 2021, having heard from counsel for the Joint Administrators and for the joint administrators of Index Labs, the High Court made the following orders:

***“1.1 The appointment of the Administrators will cease to have effect and the administration order made on 26 March 2021 will be discharged, such order to take effect immediately upon the making of an order by the Royal Court pursuant to the Jersey Application to place the Company into liquidation in that jurisdiction (whether by way of a just and equitable winding up, or by way of a declaration of en désastre proceedings);*”**

1.2 In the event that the Royal Court declines to make an order for the winding up of the Company (whether a just and equitable winding up or a declaration of en désastre) at the hearing of the Jersey Application then, for the avoidance of doubt, the above order shall be of no effect, the Administrators' appointment shall continue and the Administrators shall, as soon as reasonably practicable, restore this Application for hearing in the interim applications list for further directions of this Court;"

It is to be noted that the High Court set out two grounds upon which the Jersey Court might place Betindex into liquidation, namely, by way of a just and equitable winding up or by way of a declaration *en désastre*.

Position of the parties

- 14 At the hearing on 5th November 2021, the Joint Administrators sought an order for its winding up on just and equitable grounds and for the appointment of two of their number, namely Mr Rabet and Mr Toone as joint liquidators.
- 15 Leigh Day, who represented a group of approximately 7,000 clients or Traders who had lost money due to the collapse of Betindex and who are creditors of Betindex, confirmed that they supported the application for Betindex to be wound up by the Court on the basis that they were not aware of any other viable alternative and it appeared to be the most cost effective solution to maximise the likely return for their client group. They were not instructed to make any representations as to who should be appointed to be liquidators.
- 16 Mr David Hamel, a member of the creditors' committee, wrote to the Court on 3rd November 2021, recommending the appointment of Begbies Traynor as liquidators of Betindex, as he stated that this would ensure that any future legal and insolvency costs were as efficient as possible, and which will provide creditors with the maximum possible return. He said that collectively, creditors the committee represented had £124 million of open bets with Betindex.
- 17 The Court had received eight letters from individual creditors or Traders written in identical terms, supporting the appointment of Begbies Traynor as joint liquidators of Betindex, on the basis that having been administrators whilst the company was in UK administration, Begbies Traynor were best placed to continue in office as liquidators for the benefit of the creditors.
- 18 Carey Olsen wrote to the Court on 13th October 2021 on behalf of Mr Neil Kelly, who had been sole director of Betindex over the "*turbulent*" period from March 2021. He ceased to be a director on 29th September 2021 and therefore had no role to play in the proceedings. He asked that in any orders made by the Court it preserved all rights of employees and former

employees to make claims.

- 19 Mrs Lynda Allo, the senior manager of the insolvency team within the Viscount's Department wrote to Advocate Gardner on the 8th October 2021, saying that in principle, there was no objection to the relief sought and raising a number of ancillary points.
- 20 Index Labs did not dispute that the administration of Betindex had failed, nor that the company should be wound up, but it was opposed to the appointment of Begbies Traynor as joint liquidators. It questioned why the Joint Administrators were pursuing a just and equitable winding up in Jersey, as opposed to a creditors' voluntary liquidation in England, or even a creditors' winding up in Jersey. In particular, Index Labs was unclear as to why the Joint Administrators sought to put Betindex into a just and equitable winding up in Jersey, given that the creditors' claims are governed by English law, the vast majority of the creditors of Betindex are in England, and there are issues arising out of the administration which will need to be resolved by any liquidator before the English courts. A process existed for placing Betindex into a UK creditors' voluntary liquidation. Moreover, Index Labs as shareholder would be prepared to pass a special resolution putting Betindex into a creditors' winding up under Chapter 4 of the Companies Law.
- 21 Index Labs pointed out that a UK creditors' voluntary liquidation or even a Jersey creditors' winding up would allow the creditors to appoint a liquidator of their choice, and a voice in supervising the liquidation. No such opportunities would be afforded to creditors in the orders sought by the Joint Administrators and indeed, the Joint Administrators had not consulted the creditors in this regard. In any event, Index Labs submitted that it was inappropriate to appoint the Joint Administrators as liquidators of Betindex as there were potential claims against them arising out of their conduct of the administration of Betindex which required investigation and which it was said would put them in a position of an irreconcilable conflict of interest.

Method of winding up – in Court or out of Court

- 22 The Court was given to understand that under English law, there was no jurisdiction for the English court to wind up a foreign registered company through a creditors' voluntary liquidation. The Court had sought the assistance of the English court simply because Jersey does not have the facility of placing a company into administration; it would not have sought the assistance of the English court simply to wind up a Jersey incorporated company, for which there are well established procedures.
- 23 Furthermore, the English Court had ordered that the administration be discharged conditional upon this Court placing Betindex into liquidation either through a just and equitable winding up or through a declaration *en désastre* upon which the English administration would cease. It would have been quite inappropriate for this Court to decline to proceed in one or other of these ways over a company incorporated in its jurisdiction and

for the matter to revert back to the English court.

24 The key advantage of a creditors' winding up from the prospective of Index Labs was that it enabled the creditors to choose who should conduct that winding up. The unproven creditors of Betindex comprise Index Labs and (as we understand it) two other companies within the group, and the 175,000 or so Traders who had invested some £124 million. The Court accepted the Joint Administrators' view that involving the Traders in the process of choosing liquidators was unworkable in practice.

25 Furthermore, there were strong arguments for the winding up to be conducted in Court through a just and equitable winding up for the following reasons:

(i) This is a high-profile collapse involving thousands of Traders and a gambling regulator in each of Jersey and the UK. It was in the interests of the reputation of Jersey, and the public interest generally, for the Court to supervise the winding up.

(ii) Betindex could no longer provide the services of a gambling platform and its substratum had arguably been lost.

(iii) There are going to be serious issues relating to the adjudication of creditor claims in the winding up which are likely to be subject to quite complex Court applications. Therefore, it seemed more appropriate for the Court to be involved in the winding up from the outset and for it to be conducted under its supervision. It was already anticipated that there may be a need to make an application to the Court for directions under Article 51 of the Trusts (Jersey) Law 1984 concerning the trust account monies, how they should be administered and how fees and expenses should be allocated.

(iv) The Court was already involved, having initiated the administration process by sending a letter of request to the High Court of England and Wales and had already heard the Joint Administrators' application in respect of the trust account on 22nd June 2021, by which the Viscount was ordered to transfer the monies that she was holding to the Joint Administrators.

(v) A Court winding up on just and equitable grounds provided a flexible procedure enabling the Court to make whatever orders were required to suit the needs of each case, and there was no such equivalent flexibility provided under a creditors' winding up.

(vi) Of the two options put forward by the English Court, there was no benefit in proceeding by way of a declaration *en désastre*, as the complexities of the case meant that the Viscount would have to engage external advisers. Rather than use the resources of the Viscount's department, it was preferable for the winding up to be conducted by professional insolvency experts.

26 There were considerable uncertainties as to how to value the claims of the Traders, but Mr

Hyde had calculated that their claims were valued at between £65.2 million and £90 million, and on this basis, Betindex was insolvent. Insolvency alone is not in the ordinary case a ground for invoking the just and equitable jurisdiction under Article 155 of the Companies Law, as the Court said in the case of *In the matter of Pound World (Jersey) Limited* [2009] JRC 042 (at paragraphs 15 and 16). The Companies Law provided appropriate procedures which should be followed in the ordinary case. In the Court's view, this was not an ordinary case for the reasons set out above, and it was appropriate to invoke the just and equitable winding up jurisdiction.

Liquidators

27 Index Labs objected to the appointment of Begbies Traynor as the joint liquidators of Betindex for a number of reasons, but principally:

These are matters that in the view of the joint administrators of Index Labs needed to be investigated and which would place Begbies Traynor in a position of conflict. They proposed that principals from Grant Thornton be appointed.

(i) The Joint Administrators had failed to exercise their rights to reduce the dividends payable by Betindex to the Traders to zero, preventing a liability of £550,000 per month accruing, and this when there was legal advice obtained from Jersey lawyers by Betindex on 4th March 2021 (prior to the appointment of the Joint Administrators) that the dividend could and should be reduced to zero.

(ii) They were concerned at the level of costs incurred by the Joint Administrators in exploring a CVA beyond the point when it was no longer viable. Furthermore, the Joint Administrators had continued to require the services of Index Labs in maintaining the platform when they were not fully required.

28 Mr Rabet addressed the criticisms in his third affidavit, but in summary:

(i) The Joint Administrators had taken a commercial decision not to cut the dividend as in their view, to do so would sound the death knell of any attempt to rescue Betindex as a going concern. The main purpose of buying a share to trade on the platform was to accrue dividends on that share. Taking that right away would have been extremely provocative. He said the directors had received death threats and vitriolic abuse on social media and this would have intensified significantly if dividends were reduced to zero.

(ii) There was an argument that cutting the dividend would amount to a repudiation of the betting contracts giving rise to a significant crystallised liability of around £90 million and in any event, cutting the dividend would have had a marginal effect in that the dividend would be offset by a reduction in the value of the Traders' shares, which decreased in value over time.

(iii) The Joint Administrators had worked closely with Index Labs which developed and owned the software which enabled the platform to trade. The Joint Administrators had procured GDA Luma as a funder, and the Joint Administrators had worked with the board of Index Labs, GDA Luma and with the joint administrators of Index Labs after their appointment, attending numerous calls and meetings. Mr Rabet says that at no time was any criticism made either over the dividend or the CVA strategy until 29th October 2021, shortly before the hearing.

- 29 Advocate Passmore confirmed that no such criticisms concerning the reduction of the dividend had been made until 29th October 2021, and whilst the Court was not in a position to make any finding as to whether that criticism had any validity, it was not persuaded that the existence of those late criticisms outweighed the benefit of principals from Begbies Traynor transitioning from their role as administrators of Betindex to becoming liquidators with the considerable accumulated expertise that now resided in Begbies Traynor, and the substantial costs (and delay) that would be occasioned by bringing in wholly new insolvency professionals (and their new legal advisers in Jersey and England). These are professional liquidators and in the first instance it would be for them to assess whether any material conflict of interest had arisen and if so, it would be incumbent upon them to deal with the same in accordance with their professional duties and established procedures.
- 30 The Court noted that none of the Traders had voiced any opposition to their appointment, (a number were in favour) and in the Court's view, the interests of the creditors as a whole lay in Begbies Traynor continuing.

Conclusion

- 31 The Court therefore exercised its powers under Article 155 of the Companies Law to order the winding up of Betindex, and the appointment of Mr Rabet and Mr Toone of Begbies Traynor as joint liquidators. The Court granted them the usual powers and to assist continuity agreed that a creditors' committee be established comprising the same individuals who were appointed as members of the creditors' committee in the English administration.