

# The Representation of Richard Rendle and Roderick Butcher, Joint Liquidators of Arck LLP and And an Application for the Restoration of Estrela Ltd and the Rectification of its Register for an Equitable Winding-Up and And the Companies (Jersey) Law 1991, as Amended

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	J. A. Clyde-Smith, Jurats Crill, Sparrow
<b>Judgment Date:</b>	09 January 2017
<b>Neutral Citation:</b>	[2017] JRC 4
<b>Reported In:</b>	[2017] JRC 4, [2017] JRC 004
<b>Court:</b>	Royal Court
<b>Date:</b>	09 January 2017

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## Text

[2017] JRC 004

ROYAL COURT (Samedi)

Before:

J. A. Clyde-Smith, Esq., Commissioner and Jurats Crill and Sparrow

In The Matter of the Representation of Richard Rendle and Roderick Butcher, Joint  
Liquidators of Arck LLP

And In The Matter of an Application for the Restoration of Estrela Limited and the  
Rectification of its Register for an Equitable Winding-Up  
And In The Matter of the Companies (Jersey) Law 1991, As Amended

**Advocate J. D. Garrood for the Representors.****Authorities**

Companies (Jersey) Law 1991.

*Independent Marine Services Limited* [\[1996\] JLR 294](#) .

*In the matter of the Registration of Thayer Group* [\[2006\] JRC 125B](#) .

Companies — application by the representor for the restoration and rectification of the register for Estrela Ltd.

**THE COMMISSIONER:**

- 1 In this case the Liquidators of Arck LLP (“Arck”), a UK limited liability liability partnership, seek the restoration of a Jersey incorporated company, Arck Estrela Limited (“Estrela”) and the rectification of its register so that an application can be made for its equitable winding-up under Article 155 of the Companies (Jersey) Law 1991 (“the Companies Law”).
- 2 The application is being funded by the creditors of Arck in the hope that a properly conducted liquidation of Estrela may result in substantive recoveries to Arck.
- 3 The general background is that Ark was established by Mr Richard Clay and Ms Kathryn Clark as an investment vehicle for unregulated property development investments, attracting a large number of private UK investors between 2006 and 2011, who invested approximately £50 million in total. One of the investments entered into by Arc was a property development in Cape Verde via Estrela. Arck advanced a loan of approximately £24.4 million to Estrela to finance the development, which remains outstanding in its entirety.
- 4 Arck went into liquidation in 2012 amidst allegations that the investment scheme was a scam perpetrated by Mr Clay and Ms Clark to defraud investors. Following an investigation and prosecution by the UK Serious Fraud Office (“SFO”), Mr Clay and Ms Clark were found guilty of various fraud and forgery offences. Mr Clay was sentenced to more than 10 years in jail, while Ms Clark received a 2 year suspended sentence. Both have been disqualified from serving as directors.
- 5 Arck's main creditor is Clydesdale Bank plc (trading as Yorkshire Bank) (the “Bank”), which had provided banking facilities to Arck prior to its winding up and had held Ark investors' subscription monies.

- 6 The Bank initially asserted both secured and unsecured claims in the liquidation, although the secured claim has now effectively been discharged.
- 7 A substantial part of the Bank's unsecured claim in the liquidation arises consequentially upon arrangements whereby the Bank has agreed to compensate certain of Arck's investors in return for an assignment to the Bank of those investors' claims in the liquidation. This claim amounts to £20,086,387.59. Total unsecured claims in the liquidation amount to approximately £45 million.
- 8 The threshold for an application to restore a company under Article 213 of the Companies Law is low (see *Independent Marine Services Limited* [1996] JLR 294) and we accept that Arck has a sufficient interest, not just through its position as a creditor, but also as an indirect beneficial owner of Estrela to justify declaring Estrela's dissolution void.
- 9 The difficulty for the joint liquidators is that Arck is not registered as a member of Estrela and cannot therefore make an application under Article 155 of the Companies Law for its equitable winding up.
- 10 Arck's interests in Estrela are via two routes:—
  - (i) It wholly owned Oscar Investments Limited, another dissolved Jersey incorporated company, which in turn owned 50% of Leefran Limited, another dissolved Jersey company. Leefran in turn owned 47.5% of Estrela. Using this route it would be necessary to restore Oscar and Leefran and appoint directors to those companies.
  - (ii) Following arrangements entered into in 2011 Mr Ian Hobbs agreed that he would hold 100 shares in Estrela as bare trustee and nominee for Arck. Instructions were given to lawyers to draw up the declaration of trust but that, as it turned out, was never executed. On the basis that there is a valid bare trust, Arck is entitled to bring that trust to an end pursuant to Article 43(3) of the Trusts (Jersey) Law 1984 and have the 100 shares registered in its name, a much simpler route.
- 11 The issue in this short hearing this morning is whether the Court is satisfied that Mr Hobbs does hold those 100 shares as bare trustee for Arck. Without going into the evidence as set out in the affidavit of Roderick Graham Butcher, one of the two joint liquidators, we are satisfied that he does. Any doubt is dispelled by the fact that Mr Hobbs has been served with the application and has confirmed in writing that he will not be participating in the proceedings and has no objection to the relief being sought, namely on the basis that he is a bare trustee.
- 12 Accordingly we can proceed down the much simpler route of restoring Estrela and rectifying Estrela's share register and avoid the cumbersome and costly route of restoring two other companies.

- 13 From a practical perspective Arck cannot be registered as a member because even if Estrela is restored, it has no directors to register the transfer, the corporate directors having themselves been dissolved. Arck therefore seeks an order for the rectification of Estrela's share register pursuant to Article 47 of the Companies Law, a provision which it has been held is to be widely construed (see *In the matter of the Registration of Thayer Group* [\[2006\] JRC 125B](#)).
- 14 The appropriate persons with an interest in the matter have been convened and none have appeared to object and we think it is appropriate to facilitate the objectives of the joint liquidators in this way.
- 15 Turning therefore to the Representation, we are happy to make the orders as set out on page 10 of the Representation conditional upon an application being made under Article 155 within 21 days:
- (i) The dissolution of Estrela be declared void pursuant to Article 213 of the Companies (Jersey) Law 1991;
  - (ii) A declaration that Hobbs Trusts was established in favour of Arck on 21<sup>st</sup> October, 2011 and has now been terminated under Article 43(3) of the Trusts (Jersey) Law 1984; and
  - (iii) That Estrela's register of members be rectified pursuant to Article 47 of the Companies (Jersey) Law 1991 to reflect that Arck is the legal owner of 100 ordinary shares in Estrela.
- 16 There will be liberty to apply.