

Richard Toone

Jurisdiction:	Jersey
Judge:	J. A. Clyde-Smith OBE., Jurats Crill, Le Heuzé
Judgment Date:	19 October 2022
Neutral Citation:	[2022] JRC 221
Court:	Royal Court

vLex Document Id: VLEX-919041031

Link: <https://justis.vlex.com/vid/richard-toone-919041031>

Text

In the Matter of Betindex Limited (In Liquidation)

and

In the Matter of Article 51 of the Trusts (Jersey) Law 1984

and

In the Matter of Article 155 of the Companies (Jersey) Law 1991

Richard Toone

First Representor

Adrian Rabet (as the Joint Liquidators of Betindex Limited)

Second Representor

[2022] JRC 221

Before:

J. A. Clyde-Smith OBE., Esq., Commissioner, and Jurats Crill and Le Heuzé

ROYAL COURT

(Samedi)

Companies.

Authorities

Trusts (Jersey) Law 1984.

Companies (Jersey) Law 1991.

In the matter of Betindex Limited [\[2021\] JRC 309](#).

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

THE COMMISSIONER:

- 1 On 20th September 2022, the Court gave directions to the Joint Liquidators of Betindex Limited (“the Company”) as to how they should deal with certain monies held on trust by the Company.
- 2 The Company (which traded as Football Index) was incorporated in Jersey on 17th July 2015 and operated a gambling platform trading extensively in the UK market. The Company was regulated by the Jersey Gambling Commission (“JGC”) as a remote gaming operator and the UK Gambling Commission (“UKGC”), although both licences were suspended on 11th March 2021.
- 3 The Company was placed into administration by the English High Court on 26th March 2021 (“Administration Order”), pursuant to a letter of request from the Royal Court dated 18th March 2021, such administration being recognised by the Royal Court on 26th May 2021.
- 4 The Joint Liquidators were appointed by the Court on 5th November 2021 when the Court ordered that the Company should be wound up on just and equitable grounds, pursuant to Article 155(1) of the Companies (Jersey) Law 1991 for the reasons set out in its judgment reported as *In the matter of Betindex Limited* [\[2021\] JRC 309](#). The Administration Order was then terminated.
- 5 The Representation is concerned with aspects of the administration of a trust fund by the Company as trustee, which was ancillary to the Company's operations.

Background to the Company's business and establishment of the Trust

- 6 We take the background from the Representation of the Joint Liquidators. The Company's business model consisted of an online application ("Platform") which was designed to make betting on football resemble stock market speculation. Customers (known as "Traders") would pay funds into their Football Index account on the Platform and those funds could then be used to place bets on professional footballers. The bets were placed on individually named footballers and were referred to as "shares" in the named football player (with multiple shares being issued in respect of any given player).
- 7 The terms of wager by Traders were set out in the Company's Terms of Use and the Rules (collectively, the "Terms"). Trading on the Platform commenced in or about October 2015.
- 8 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 the bets placed) could be paid, linked to the performance of the footballer on which the bet was placed and that footballer's media activity.
- 9 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 the Company. Where Traders sold shares to other Traders, the purchaser put 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.
- 10 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.
- 11 It was a requirement of both the JGC and the UKGC that the Company provide a means to protect the non-wagered funds of the Traders. The JGC's licence conditions for the Company required that Trader monies were segregated (ring fenced) from operational monies and that they were to be held on trust irrespective of the mechanism used to protect them.
- 12 By a trust instrument dated 18th February 2020 the Company declared itself as trustee of the Traders' monies as held in the Client Bank Account (as defined in the trust instrument) in order to become Client Bank Account Monies (also defined in the trust instrument) ("the Trust"). The Trust is governed by English law.
- 13 The Client Bank Account Monies consisted of:

However, once a Trader had wagered on the Platform ("Open Bet") that bet quantum was no longer part of the Client Bank Account Monies, having been deducted from the Trader's

ledger.

(i) cleared funds deposited with the Company by Traders to purchase shares in players, or to meet participation fees in respect of future wagering activity on the Platform; and

(ii) bet winnings or prizes resulting in wagering on the Platform, which the Trader has chosen to leave on deposit with the Company, or for which the Company has yet to account to the relevant Trader; and

(iii) crystallised but unpaid loyalty or other bonuses in respect of any Trader earned on the Platform.

- 14 At the date of the appointment of the Joint Administrators, the Client Bank Account contained a balance of £4,504,307.17, of which £3,610,661.49 belonged to Traders, and approximately £893,645.68 was identified as surplus funds which were intended to cover future Dividends.
- 15 Subject to some exceptions, the Company charged a 2% commission on each sale and a 2% commission on purchases made through placing a “bid”. In addition, the Company could earn revenue from issuing new shares to the market. It is presumed that this income was used to pay for the Company's daily liabilities, including the operational and management expenses of the Trust.

Interpretation of the Trust Deed post Administration

- 16 It became apparent to the Joint Administrators that the terms of the trust instrument, when viewed within the context of the Terms, raised questions as to the handling of the Trust in the event of an insolvency. In particular, this related to the correct date on which the entitlements of the beneficiaries of the Trust (i.e. the Traders) should be calculated.
- 17 On 30th April 2021, the Joint Administrators filed an application with the High Court seeking the court's guidance on these issues. On or about the same date, the Joint Administrators requested that Client Bank Account monies be paid to the Viscount pursuant to an order of the Royal Court dated 18th March 2021.
- 18 The application took place before the High Court on 21st May 2021 which by its judgment of the 8th June 2021 fixed the date for calculating Trader entitlements to monies at 26th March 2021, being the date of the Administration Order.

Details of the Trust and the Traders

- 19 As at the date of the Administration Order, there were approximately 150,000 Traders with positive balances in the Trust. Due to the nature of the arrangements between the Company and the Traders, it is not possible for the Company to “push” trust monies out of the Traders' Platform e-wallets back into their bank accounts. This is due to the fact that the Company does not hold bank account details for the Traders. The Company is therefore reliant on the Traders requesting the return of the Trust funds standing to their credit in their accounts.
- 20 The Joint Liquidators have therefore attempted to contact the Traders, using e-mail contact details that are available to the Company, and where available, mobile numbers, in order to inform them that they should apply for the return of their monies. A number of Traders have recovered monies in this way. As at 31st March 2022, the date of the Representation, there were 141,856 Traders with Trust balances; up until now all Traders who have applied have been paid their Trust balances, or in other words, monies owed to them contained within the Client Bank Account at 100%.
- 21 However, there is an ongoing cost to the Joint Liquidators to administer the Trust (all of which was covered by the Company prior to entering administration). The High Court ordered that the costs of the UK Trust Application were to be paid from the Trust; however, due to unforeseen circumstances the costs to administer the Trust have meant that the surplus no longer exists.
- 22 This means that in the future Traders who approach the Joint Liquidators for the recovery of monies owed to them may not receive 100% of the Trust funds due to them.
- 23 As at 31st March 2022, the Trust balance stood at £898,654.72 (after all incurred but unpaid costs are taken into account) with Trader liabilities of £1,315,200.29.

Efforts to contact Traders to return Trust monies, both via the Platform and otherwise

- 24 The Joint Administrators, and now the Joint Liquidators, have made internet, and conducted email campaigns to draw to the attention of the affected Traders that their funds may be reclaimed.
- 25 It is unclear the reasons why Traders have been reluctant to come forward to be refunded Trust monies owed to them, but the Joint Liquidators consider that there will be further opportunity for Traders to do so when the substantive claims against the Company are adjudicated.
- 26 Due to the absence of a technical solution which would make the recovery of Trust monies by Traders a simple process, currently all claims are having to be processed manually

which is both time consuming and costly.

Adjudication of Company claims in liquidation

- 27 The Joint Liquidators will shortly commence the process of adjudicating creditor claims against the Company.
- 28 The Joint Liquidators consider that Open Bets are valid creditor claims of the Company. The Joint Liquidators believe that there is an overlap of approximately 75% of Traders who have both Open Bets and monies held in Trust.
- 29 The Joint Liquidators anticipate that some Traders may be more motivated to seek a return of monies owed to them, either from the Trust and/or the Company as part of the adjudication and distribution process in the liquidation. Given that the Traders are required to submit to the Joint Liquidators identification material for the return of monies owed to them, the balance of Trust monies and the prospect of *pari passu* distribution out of the Company's assets may (when aggregated) provide a greater incentive for Traders to come forward.

Problems with the administration of the Trust

- 30 The problems with the ongoing administration of the Trust can be summarised as follows:
- (i) The Joint Liquidators and previously the Joint Administrators have made concerted efforts to pay out the Trust monies but at the date of the Representation (nine months after they started paying out the funds) and as previously stated, there remained £1,315,200.29 in claims against the Trust owing to 141,856 Traders.
 - (ii) Payment efforts have all but dried up largely, it is assumed, due to the relatively small amounts owing to the many of those remaining Traders. The figures show this:
 - (a) 71.45% of the creditors who have requested payment from the Trust were owed more than £100.
 - (b) By contrast, only 20.28% of the Traders with trust balances between £20 and £29.99 have requested payment from the Trust.
 - (c) 93.8% of the total number of remaining Traders (numbering 133,096) are owed less than £30 from the Trust.
 - (iii) The cost of administering the Trust became especially high when the Platform was shut down on 19th August 2021, with applications having to be dealt with manually and with the Joint Liquidators being reliant on Traders to provide bank

details and KYC material.

(iv) As at 25th April 2022, the sum of £1,318,200.29 had been spent on (or had been incurred but not paid) in dealing with the Trust. Of this:

(a) £474,327.72 relates to trustee and legal fees. Of that sum, £52,180.50 relates to trustees' fees. The bulk of the legal fees relates to the UK Trust-related applications.

(b) £400,974.45 relates to keeping the Platform operational until it was closed down.

(c) £443,317.17 relates to administrative costs since the Platform was closed down.

(v) As a result of costs the Trust is in deficit to the tune of £416,545.57 which means that in the hypothetical scenario of all beneficiaries being paid from the Trust, each would receive a *pro rata* return.

Options for the administration of the Trust

- 31 The Joint Liquidators have investigated seven possible options for the ongoing administration of the Trust. Very briefly, the first option would be to transfer the Trust assets to HM Receiver General. Leaving aside the difficulty in describing the Trust assets at this stage as bona vacantia, the Receiver General's charging arrangements (£500 per transaction) would have a similar net effect to the elimination of all balances of less than £500. There are only 100 Traders with balances of £500 or more. The second option is to apply a "haircut" to all Trader Trust balances, or under the third option, to eliminate all Trader Trust balances below a certain minimum figure. Both these options are uneconomical and unattractive as the Trust claims have almost dried up. Both are potentially unfair and neither leads to any ultimate resolution of what to do with any residual balance.
- 32 The fourth option is to use the Company's resources to replenish the Trust, but that is also unattractive, as the Trust has got to a level where it is uneconomical to operate and claims are drying up.
- 33 The fifth option is to continue to pay the Trust beneficiaries in full, charging all Trust administration costs to the Trust. This suffers from the fact that the Trust may never fail but hang in perpetuity or fail well after the Company has been wound up, and therefore the Trust Deed's termination clause would be rendered ineffective.
- 34 The sixth option is to transfer the Trust balances to the Company's estate to be available to all creditors, the majority of whom may be Traders with Open Bets. This may be regarded as unfair, especially as there may be confusion in the minds of some Traders as to where their claims lie and it may not be fair for relatively large Trust balances to fall into the

general pot of assets.

- 35 The seventh option, which is an extension of the approach in option 6, is to pause any further distribution from the Trust until such time as the Joint Liquidators have assessed the Trader Open Bet claims and added any Trust sums outstanding if any to each respective Trader claim at the time of payment of that distribution.
- 36 Mr Rabet had explored the pros and cons of each of these options in greater detail in his affidavit of 25th April 2022 and the Joint Liquidators have reached the conclusion, with which the Court agreed, that the seventh option was the most prudent way forward.

Convening orders

- 37 The members of the liquidation committee and their representatives had been convened to the hearing, the Court accepting that it was not practicable or proportionate to attempt to convene all 141,856 Traders. The Company's trade creditors, (as opposed to Trader creditors) had also been informed of the Representation and served with copies of the Representation and the affidavit in support. There had been no response.

Legal basis for the Representation

- 38 The Trust is governed by English law but the Court has jurisdiction, pursuant to Article 5 of the Trusts (Jersey) Law 1984 as the trustee is resident in Jersey, the trust assets are located here and the Trust is administered here.
- 39 Furthermore, the Company is in a court winding up on just and equitable grounds with the Company owning certain assets which fall within the liquidation estate and holds other assets as trustee of the Trust. Although the Trust assets do not fall within the liquidation estate, they are payable by the Company exclusively to Traders many of whom are also unsecured creditors of the Company. It falls to the Joint Liquidators to deal with the Trust monies alongside the Company's assets.
- 40 Article 51 of the Trusts (Jersey) Law 1984 provides the Court with broad discretion to give orders in relation to trusts over which the Court has jurisdiction on the application of, *inter alia*, a trustee.
- 41 Advocate Gardner, for the Joint Liquidators, submitted, and the Court agreed, that the trust instrument effectively accommodates and supports the orders being sought by the Joint Liquidators.

Conclusion

42 Accordingly, the Court directed and authorised the Joint Liquidators to proceed with the seventh option, which broadly would be as follows:

- (i) Pay from the Trust Assets all outstanding costs of administering the Trust;
- (ii) Give notification to Traders that Traders have 40 days to make a claim on the Trust Assets, following which the administration of the Trust will be placed into abeyance;
- (iii) A separate application be made to the Royal Court in due course in respect of the adjudication of Open Bets.
- (iv) Once the parameters for adjudication of Open Bets have been set, and Open Bets have been adjudicated and where possible added to outstanding Trader Trust monies, Traders will be notified of their Trust balance (before the impact of any forfeiture) and their Company Claim adjudicated. They will then have 6 months within which to file with the Joint Liquidators adequate documentation for the purposes of refunding monies owed to them (either from the Trust and/or the Company) in accordance with relevant AML/KYC applicable legislation, in addition to bank account details.
- (v) Traders who do not provide either any or all of the documentation necessary for the return of funds owed to them within 6 months, will automatically forfeit any right to those claims.
- (vi) Following forfeiture, if any:
 - (a) Where claims against the Trust exceed the amount available, Trust distribution will be paid on a pro rata basis.
 - (b) If all Trust Claims can be paid in full then any remaining surplus of Trust Assets will belong to the Company for the benefit of all unsecured creditors.
 - (c) All claims (whether purely Trust claims, purely Company claims or an aggregation of both, where applicable) will be paid out as a single distribution in the liquidation of the Company once all Company assets have been collected.
- (vii) The Trust is then terminated.