

Centurion Management Services

Jurisdiction:	Jersey
Judge:	J. A. Clyde-Smith, Jurats King, Le Cornu
Judgment Date:	01 December 2009
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Text

[2009] JRC 227

ROYAL COURT

(Samedi Division)

Before:

J. A. Clyde-Smith, **Esq., Commissioner and** Jurats King **and** Le Cornu.

In the Matter of Centurion Management Services Limited And Article 155 of The
Companies (Jersey) Law 1991.

Mr Kerry Carter
Representors
Mr Victor Ho and
Mr Paul Cook
and
Centurion Management Services Limited
First Respondent

Russell Thomas Gray
Second Respondents
James Alexander Stuart Hardcastle
The Viscount
Third Respondent
Jersey Financial Services Commission
Fourth Respondent

The creditors of Centurion Management Services Ltd as listed in the schedule to the Act of
Court of 6th October 2009
Fifth Respondents

Advocate D. R. Wilson for the Representors.

Advocate P. C. Sinel for the Second Respondents.

Advocate J. M. P. Gleeson for M. Jean-Pierre Schenk, one of the creditors.

Authorities

Financial Services (Trust Company Business)(Assets-Customer Money)(Jersey) Order 2000.

Re Leveraged Income Fund Limited 2002/209.

In the matter of Belgravia [\[2008\] JRC 161](#).

Companies (Jersey) Law 1991.

THE COMMISSIONER:

- 1 On 6th October, 2009, the Court ordered the winding up of Centurion Management Services Limited ("Centurion") pursuant to Article 155 of the Companies (Jersey) Law 1991 ("the Law") and this on the grounds that it was just and equitable to do so.
- 2 Centurion is licensed to carry on trust company business and *inter alia* manages assets on behalf of third parties held in trusts and companies.
- 3 Centurion has been the subject of close regulatory attention. The Jersey Financial Services Commission ("the JFSC") required the appointment of the Representors as directors in order to bring Centurion's corporate governance, in terms of span of control, in line with the code of practice for trust company business. The JFSC had identified a wide variety of failings on the part of Centurion, both in terms of compliance with the codes of practice and Jersey's primary and secondary legislation. It had identified apparent misuse by Centurion's former directors of its client account, apparent breaches of the Financial

Services (Trust Company Business)(Assets-Customer Money)(Jersey) Order 2000 and an ongoing failure to comply with the regulatory capital requirement as determined by the adjusted net liquid asset calculation.

- 4 On 3rd August, 2009, and 17th September, 2009, with the consent of the JFSC, Centurion entered into a sale and revenue sharing agreement with Trustcorp Services Limited ("Trustcorp") under which:-

The combination of these two agreements and the client exit process will result in Centurion having no ongoing revenue once all clients have been exited.

(i) Trustcorp agreed to acquire those client entities that met its take on procedures and standards.

(ii) In broad terms Trustcorp agreed to pay 60% of the relevant gross annual revenue earned and received during the 12 months following the transfer of such entities, payable as to one half quarterly in arrears with the balance payable at the end of the 12 month period.

- 5 Following directions from the JFSC, Baker Platt act as co-signatories and Mr Edward Daniel Shorrock, FCA, of that firm ("Mr Shorrock"), has been in almost daily contact with Centurion in that connection. Furthermore, he has attended all board and committee meetings since July 2009 pursuant to directions issued by the JFSC, enabling him to gain an understanding of the issues faced by Centurion and its clients.
- 6 Centurion is insolvent on both the balance sheet and cash flow tests. In view of its financial position and regulatory difficulties, together with the agreements now entered into with Trustcorp, there is no prospect of it trading out of its current situation. The winding up of Centurion is therefore inevitable.
- 7 The three options available are a creditors' winding up, a *désastre* or a winding up on just and equitable grounds.
- 8 Mr Wilson, for the Representors, submitted that a just and equitable winding up was the most appropriate remedy for the following reasons:-
- (i) Centurion will need to carry on trading after the commencement of the winding up and during 2010 whilst *inter alia* it transfers its client entities to Trustcorp and exits other client relationships. Any liquidator appointed will continue to incur liabilities in so doing.
- (ii) A creditors' winding up would not necessarily allow for the interests of Centurion's clients to be taken into account during the winding up. Article 159(1) of the Law

provides that the company must, from the commencement of the creditors' winding up “**cease to carry on its business, except so far as may be required for its beneficial winding up**” and this may limit the extent to which a liquidator would be able to take into account the interests of Centurion's clients.

(iii) Centurion's clients would be likely to have more confidence in a just and equitable winding up rather than a creditors' winding up because the liquidator would be directly accountable to the Court. The potential financial benefit to creditors of this is that the more clients that are transferred to Trustcorp, the more money there will be for creditors. Further, if clients do not transfer to Trustcorp, very little consideration will flow back to Centurion, which will have to call on financial and staff resources of Trustcorp in order to support the termination of Centurion's client relationships not transferring to Trustcorp.

(iv) Carrying on the business in this way will require a flexibility of approach which is not expressly provided for in a creditors' winding up.

(v) With a sale of its business to Trustcorp, the sub stratum of Centurion has gone; a situation in which the courts had previously exercised their powers under Article 155 (see *Re Leveraged Income Fund Limited 2002/209*).

(vi) The choice of liquidator was important. Mr Shorrocks was best placed to undertake the role being someone with sufficient expertise and with a detailed knowledge of the matters in question. He is independent and would therefore be mindful of both clients and creditors. Mr Shorrocks was willing to accept the role of liquidator under a just and equitable winding up but was reluctant to consider a similar appointment under a creditors' winding up.

(vii) In a creditors' winding up the choice of liquidator lay with the creditors and there was a real possibility of a conflict of interest between the clients of Centurion and its creditors, which a liquidation committee appointed pursuant to Article 162 of the Law would not be adequate to deal with.

(viii) There was a need to appoint a liquidator urgently in order to protect the interests of its clients and to meet the JFSC's regulatory requirements.

(ix) Although a *désastre* could be declared immediately, the Viscount was in no better position to deal with the winding up of the company than a liquidator appointed under Article 155. Given the complexities of running a trust company business, he would need to expend considerable time and resources in acquiring a detailed knowledge of the affairs of Centurion and furthermore would need to engage external advisers and service providers, potentially involving considerable duplication of costs to the detriment of the creditors.

9 In *Belgravia* [2008] JRC 161 the Court was concerned with the need to wind up companies that managed regulated funds and where an urgent investigation was required into the possible misappropriation of assets in breach of fiduciary duties. A need to investigate a company's affairs was one of the categories developed under English law justifying a

winding up on just and equitable grounds. The Court accepted that a just and equitable winding up was the appropriate way of proceeding for a number of reasons, including:-

- (i) the need for flexibility;
- (ii) the avoidance of conflict with the creditors;
- (iii) the need to protect the interests of the investors; and
- (iv) the need for the appointment of an appropriately experienced liquidator.

10 In this case, whilst we are not dealing with a need for an investigation but with the need for the company to continue its regulated business whilst it is wound down, similar considerations apply. The application was supported by the Viscount, the JFSC, the shareholders (the second respondents) and Mr Schenk, the major creditor. No other creditor had communicated any objection. The Court therefore accepted Mr Wilson's submissions and agreed that it was just and equitable to wind up Centurion and to appoint Mr Shorrocks as liquidator. The Court approved his letter of engagement and granted him the necessary powers.