

James Robert Toynton and Alan John Roberts as Joint Liquidators of Horizon Trustees (Jersey) Ltd, Horizon Nominees Ltd and Horizon Corporate Directors Ltd ((in Liquidation))

Jurisdiction:	Jersey
Judge:	J. A. Clyde-Smith OBE., Jurats Ronge, Christensen
Judgment Date:	16 August 2021
Neutral Citation:	[2021] JRC 212
Court:	Royal Court

vLex Document Id: VLEX-900805891

Link: <https://justis.vlex.com/vid/james-robert-toynton-and-900805891>

Text

[2021] JRC 212

ROYAL COURT

(Samedi)

Before:

J. A. Clyde-Smith OBE., **Commissioner, and** Jurats Ronge **and** Christensen

In the Matter of the Representation of James Robert Toynton and Alan John Roberts as Joint Liquidators of Horizon Trustees (Jersey) Limited, Horizon Nominees Limited and Horizon Corporate Directors Limited (All in Liquidation)

and

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

and

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

James Robert Toynton and Alan John Roberts as Joint Liquidators of Horizon Trustees (Jersey) Limited, Horizon Nominees Limited and Horizon Corporate Directors Limited (in liquidation)
Representors

Advocate S. A. Hurry for the Representors.

Authorities

Companies (Jersey) Law 1991.

Trusts (Jersey) Law 1984

Representation of Horizon [\[2012\] JRC 113A](#).

Representation of Horizon Investments Limited [\[2012\] JRC 039](#).

Companies — liquidation.

THE COMMISSIONER:

- 1 On 22nd July 2021, the Court approved the final report of the Joint Liquidators in relation to the winding up of Horizon Trustees (Jersey) Limited (“the Company”) ordered on 18th May 2012 and two of its wholly owned non-trading subsidiaries, Horizon Nominees Limited and Horizon Corporate Directors Limited, ordered on 30th May 2012 (*Representation of Horizon* [\[2012\] JRC 113A](#)). The Company had carried on a trust company and administration business.
- 2 Quite separately the winding up of another company within the Horizon group of companies, namely Horizon Investments (Jersey) Limited, had been ordered earlier on 22nd February 2012. It conducted an investment management business. The history of the difficulties that have beset the Horizon group of companies is set out in the judgment of the Court of 22nd February 2012 *Representation of Horizon Investments Limited* [\[2012\] JRC 039](#), and we will not repeat it.
- 3 The Company is not only insolvent, its liabilities greatly exceeding its assets, but has such an insufficiency of assets that it will not even be possible to meet the costs of liquidation, including the fees of the Joint Liquidators and their lawyers. As a consequence of the dire financial predicament of the Company, there can be no dividend to any class of creditor of

the Company. The Joint Liquidators have not, therefore, incurred the additional cost of adjudicating on the claims received or making creditor claims available for inspection.

4 A report had been prepared by the Joint Liquidators in June 2016, and in summary:

(i) At the date of the Joint Liquidators' appointment, there were 174 underlying entities (trusts, companies and funds) to be either transferred out to other service providers or closed. That has been achieved save in relation to one trust referred to as the T Trust.

(ii) The Company had no employees at the date of liquidation-nor did its two subsidiaries.

(iii) The Joint Liquidators had identified and realised the assets of the Company for the benefit of its stakeholders. There were no assets to be realised in the two subsidiaries. Everything that could be realised had been realised.

(iv) The Joint Liquidators had identified creditors and potential creditors of the Company and corresponded with them, having reviewed the books and records of the Company. Furthermore, the Joint Liquidators placed notices in the gazette section of the Jersey Evening Post on 6th June 2012, inviting creditors and potential creditors of each of the companies to submit claims.

(v) The Joint Liquidators had made arrangements in respect of the retention and preservation of the Company's hard copy and soft copy documentation.

5 There were three issues outstanding in June 2016, namely, how to apportion an insurance refund, how to deal with shares in a company called Geosentric OYJ and the winding up of the affairs of the T Trust. These were the subject of an application by the Joint Liquidators for directions which were given by the Court on 14th July 2016 for the reasons set out in the Court's unpublished judgment of that date.

6 The issue of the professional indemnity insurance refund was resolved through those directions, which left only the issue of the T Trust, of which the Company remained trustee, and the shares in Geosentric OYJ.

7 The T Trust was itself insolvent in the sense that the claims against the assets held within the trust exceeded the value of those assets. The claims against the assets of the trust amounted to £177,331 and the assets comprised:

(i) The benefit of a loan due by A, one of the beneficiaries of the T Trust, in the sums of £85,000 and £10,000 respectively. The loan of £85,000 was secured by an equitable charge against UK property.

(ii) The T Trust had three wholly owned underlying companies which on the face of it

had the benefit of loans due by A totalling £110,000, pursuant to unsigned promissory notes.

A disputed any liability under these loans.

- 8 As the Court said at paragraph 9 of the unpublished judgment of 14th July 2016, it is understandable that the Joint Liquidators have been unable to find an alternative trustee based in Jersey to take on this trusteeship, bearing in mind the limited cash resources available to the T Trust, and its only assets comprising disputed claims against A, the recovery of which would have to be financed. The Viscount had declined to engage in finding a solution and the Receiver General had also declined to take on the T Trust.
- 9 The beneficiaries had signed a letter asking for the appointment of B who resides in the United Kingdom, as trustee of the T Trust. He is a friend of A and as the Court said at paragraph 12 of the judgment, it could not be in the interests of the creditors for him to be appointed as trustee when the only assets of the T Trust were claims against someone who is a friend of his.
- 10 The Court gave these directions to the Joint Liquidators:

“15 In the view of the Court, this is not a trust which can be passed on to another trustee and it is preferable for its affairs to be wound up by the Joint Liquidators. Advocate Le Maistre expressed concern over the Joint Liquidators being exposed to the risks involved in litigation conducted in their names, but although we think there is little chance of any creditor taking on the burden and risk which funding such a claim would impose upon that creditor, we do not think it is right to deprive the creditors of that last opportunity .

16 The Court will therefore direct the Joint Liquidators to settle the claims against [A] by the Trust and its underlying companies on the best terms that they can reasonably achieve, such negotiations to start after 21 days from the Joint Liquidators giving the creditors of the Trust notice of this judgment and associated Act of Court, unless within that time period, any one or more of the creditors apply to the Court for the Joint Liquidators to be directed to pursue the claims through litigation .

17 Any such application would be at the risk of the creditors concerned as to costs and they would have to come to Court with proposals to meet (at least) the requirements of the Court set out above and any other reasonable requirements the Joint Liquidators may put forward .

18 Advocate Franckel made the point that the creditors would need to have sufficient information to make an informed decision and therefore the Joint Liquidators will be directed to give any such creditors access to and copies of the records and advice they hold in relation to the [T] Trust and the claims against [A], the cost of the provision of such access and

copying to be discharged by the creditors seeking such access .

19 If no such application is made within this period of 21 days, the Joint Liquidators will then conduct and complete the negotiations, with authority to accept the best terms that in their opinion can reasonably be achieved. The Joint Liquidators shall have preference over any sums recovered through such negotiations for the payment of their costs, charges and expenses in conducting those negotiations. Any surplus ***thereafter will be divided between the creditors of the [T] Trust (including the Joint Liquidators for their costs, charges and expenses to date) pro rata, without prejudice to the right of the Joint Liquidators to contend for a preference, a contention they would have to advance at their own risk as to costs .***

20 The three companies owned by the Trust should then be wound up, so that at the end of this process, the Trust will have no assets and the Court can confirm its termination.”

- 11 Perhaps not surprisingly, no creditors came forward willing to finance the claims against A and the Joint Liquidators then entered into negotiations. The property securing the loan of £85,000 had been sold, and the balance held by solicitors for A's wife pending resolution of the negotiations. Without going into the history of those negotiations, the Joint Liquidators eventually settled for a payment of £35,000 which in their opinion was the best that could be achieved in the circumstances. That sum was applied against the costs, charges and expenses of the Joint Liquidators in conducting those negotiations, leaving a sum of £513.55 which the Court ordered should be applied against their outstanding fees. This had been made clear to the creditors in the final report. The three companies owned by the T Trust have been dissolved and with the payment of £513.55 to the Joint Liquidators the T Trust had terminated.
- 12 The Company also held 536,617 shares in Geosentric OYJ held by a nominee namely Kleinwort Benson (Channel Islands) Limited. Geosentric was delisted in October 2018 and the Joint Liquidators have been informed that it had to sell its only material assets to pay off its secured creditors, leaving it as a shell company with no assets. The Joint Liquidators made their best efforts to realise some value from these shares without success. The Court therefore authorised the Joint Liquidators to sign a declaration of release which will enable the nominee to write off the shares.
- 13 The Court was able therefore to approve the report of the Joint Liquidators of 15th June 2016, and their final report of 7th July 2021. The final report had been circulated to the creditors and no comments or observations had been received from any of them. The Court therefore released and discharged the Joint Liquidators upon the dissolution of the Company and its two subsidiaries.

- 14 This has been a costly exercise for the Joint Liquidators. They were appointed by the Court

and it was important for the reputation of the Island that the affairs of this trust company were properly and effectively wound up. This the Joint Liquidators have done very professionally and with great diligence and patience and they have been left with substantial fees due to their firm which are irrecoverable. The Court expressed its appreciation for them undertaking this task at such cost.